Federal Register

2–14–08 Thursday
Vol. 73 No. 31 Feb. 14, 2008

Pages 8587–8786

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.

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

WHEN: Tuesday, March 18, 2008
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Rules and Regulations

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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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL43

Prevailing Rate Systems; Definition of the Municipality of Bayamon, PR, to a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to define the municipality of Bayamon, Puerto Rico, as an area of application to the Guaynabo-San Juan, PR, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change is necessary because there are NAF FWS employees working in the municipality of Bayamon and the municipality is not currently defined to an NAF wage area.

DATES: This rule is effective on March 17, 2008.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov*; or Fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On November 14, 2007, the U.S. Office of Personnel Management (OPM) issued an interim rule (72 FR 63967) to add the municipality of Bayamon, PR, as an area of application to the Guaynabo-San Juan, Puerto Rico, nonappropriated fund Federal Wage System wage area. The interim rule had a 30-day public comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, under the authority of 5 U.S.C. 5343, the interim rule published on November 14, 2007, amending 5 CFR part 532 (72 FR 63967) is adopted as final with no changes.

[FR Doc. E8–2819 Filed 2–13–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AL44

Prevailing Rate Systems; Abolishment of Rock Island, IL, as a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to abolish the Rock Island, Illinois, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and redefine Rock Island County, IL, and Johnson County, Iowa, as areas of application to the Lake, IL, NAF FWS wage area. Carroll County, IL, will no longer be defined. These changes are necessary because employment has significantly declined in the Rock Island NAF wage area.

DATES: *Effective date:* This regulation is effective on February 14, 2008. *Applicability date:* This regulation applies on the first day of the first applicable pay period beginning on or after December 15, 2007.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; email *pay-performance-policy@opm.gov;* or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: On November 14, 2007, the U.S. Office of Personnel Management (OPM) issued an interim rule (72 FR 63968) to abolish the Rock Island, Illinois, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, redefine Rock Island County, IL, and Johnson County, Iowa, as areas of application to the Lake, IL, NAF FWS wage area, and remove Carroll County, IL, from the wage area definition. The interim rule had a 30-day public comment period, during which OPM received no comments.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, under the authority of 5 U.S.C. 5343, the interim rule published on November 14, 2007, amending 5 CFR part 532 (72 FR 63968) is adopted as final with no changes.

[FR Doc. E8–2818 Filed 2–13–08; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

[3206–AL47]

Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations—Eligibility and Public Accountability Standards

ACTION: Final rule, technical amendments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is making technical amendments to the final regulations concerning the Combined Federal Campaign (CFC). These technical amendments correct the final rule issued on November 20, 2006, as revised on February 9, 2007, by making a change to the eligibility criteria and making several administrative changes brought to OPM's attention to other sections.

DATES: This technical amendment is effective on February 14, 2008.

FOR FURTHER INFORMATION CONTACT: Mark W. Lambert by telephone at (202) 606–2564; by Fax at (202) 606–5056; or by e-mail at *cfc@opm.gov*.

SUPPLEMENTARY INFORMATION: In the final regulations issued on November 20, 2006, as revised on February 9, 2007, OPM included what it deemed was a clarification to the 1995 regulatory eligibility requirement contained in 5 CFR 950.202(b). OPM clarified the regulation by stating specifically that only public charities, as defined by the Internal Revenue Service, were allowed to participate in the CFC. The clarification meant that private foundations were not eligible to participate in the CFC even though some had participated for years. In a recent court decision, the United States District Court for the District of Columbia invalidated OPM's clarification pertaining to private foundations. As a result, OPM is amending 5 CFR 950.202(b) to remove the reference to public charities from the requirement. OPM is also taking this opportunity to make three other administrative technical amendments to 5 CFR 950.101, 950.105(c)(3), and 950.105(d)(9). In 5 CFR 950.101, OPM is amending the definition of *Domestic Area* to include the Commonwealth of Northern Mariana Islands, American Samoa, and Guam to be consistent with the addition of these U.S. territories to 5 CFR 950.204(b)(2)(iii) in the November 20, 2006, changes to the CFC regulations. In 5 CFR 950.105(c)(3), OPM is removing a reference to provision 950.403 since it no longer exists after the changes made on November 20, 2006. In 5 CFR 950.105(d)(9), OPM is removing the date for the submission of a campaign audit and adding a reference to OPM's calendar, which will include the date. This change is consistent with other changes made in the November 20, 2006, CFC regulations.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. Charitable organizations applying to the CFC have an existing, independent obligation to comply with the eligibility and public accountability standards contained in current CFC regulations. These technical amendments will not cause any significant additional burden.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 950

Administrative practice and procedures, Charitable contributions, Government employees, Military personnel, Nonprofit organizations, and Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM amends 5 CFR part 950 as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

■ 1. The authority citation for part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Public Law 102–393 (5 U.S.C. 1101 Note).

■ 2. In § 950.101, revise the definition of *Domestic Area* to read as follows:

§ 950.101 Definitions.

* * * * *

Domestic Area means the several United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, and Guam.

* * * * *

■ 3. In § 950.105, amend paragraph (c)(3) by removing the letter ''s'' from the end of the word ''provisions'' and removing the text ''§ 950.403 and'' and revise paragraph (d)(9) to read as follows:

§ 950.105 Principal Combined Fund Organization (PCFO) responsibilities.

* * * * *

(d) * * *

(9) Submitting to the LFCC an audit of collections and disbursements for each campaign managed no later than a date to be determined by OPM in the year in which the last disbursement is made. The date will be part of the annual timetable issued by the Director under § 950.801(b). The audit must be performed by an independent certified public accountant in accordance with generally accepted auditing standards and OPM guidance.

* * * * *

■ 4. Revise § 950.202(b) to read as follows:

§ 950.202 National/international eligibility requirements.

* * * * *

(b) Certify that it is an organization recognized by the Internal Revenue Service as tax exempt under 26 U.S.C. 501(c)(3) to which contributions are deductible under 26 U.S.C. § 170(c)(2). A copy of the letter(s) from the Internal Revenue Service granting tax exempt and public charity status must be included in the organization's application.

[FR Doc. E8–2794 Filed 2–13–08; 8:45 am]

BILLING CODE 6325–46–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19, 20, and 50

RIN 3150–AH40

Occupational Dose Records, Labeling Containers, and the Total Effective Dose Equivalent; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of February 15, 2008, for the final rule that was published in the **Federal Register** on December 4, 2007 (72 FR 68043). The final rule amended the NRC's regulations on the reporting of annual dose to workers, the definition of Total Effective Dose Equivalent (TEDE), the labeling of certain containers holding licensed material, and the determination of cumulative occupational radiation dose. On December 20, 2007 (72 FR 72233), the NRC published a document that deferred the effective date of this final rule until February 15, 2008.

EFFECTIVE DATE: The effective date of February 15, 2008, is confirmed for this final rule.

ADDRESSES: Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at

http://www.nrc.gov/NRC/reading-rm/adams.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at (800) 397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Stewart Schneider, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–4123; e-mail *sxs4@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission published a final rule amending regulations that would become effective January 3, 2008. The final rule, published December 4, 2007 (72 FR 68043) related to the reporting of annual dose to workers, the definition of Total Effective Dose Equivalent (TEDE), the labeling of certain containers holding licensed material, and the determination of cumulative occupational radiation dose. This final rule limits the routine reporting of annual doses to those workers whose annual dose exceeds a specific dose threshold or who request a report. The rule also modifies the labeling requirements for certain containers holding licensed material within posted areas in nuclear power facilities, and will amend the definition of TEDE to be consistent with current Commission policy. Finally, this rule removes the requirement that licensees attempt to obtain cumulative exposure records for workers unless these individuals are being authorized to receive a planned special exposure. These revisions reduce the administrative and information collection burdens on NRC and Agreement State licensees without affecting the level of protection for either the health and safety of workers and the public, or for the environment.

This final rule amends information collection requirements contained in 10 CFR parts 19, 20, and 50, and NRC Form 4 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These information collection requirements were sent for approval to the Office of Management and Budget on November 28, 2007. The effective date of this final rule was deferred to allow sufficient time for OMB to complete its review of the information collections requirements imposed in this rule. Because the rule will reduce the burden for existing information collection requirements, the public burden for the information collections in 10 CFR parts 19 and NRC Form 4 is expected to be decreased by 235 and 44 hours per licensee, respectively. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. The NRC has received final approval for these amended requirements by the Office of Management and Budget, approval number(s) 3150–0044, 3150–0014, 3150–0011, and 3150–0005.

Dated at Rockville, Maryland, this 8th day of February, 2008.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E8–2801 Filed 2–13–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Nos. FAA–2007–0410, FAA–2007–0411, and FAA–2007–0412; Directorate Identifiers 2007–NM–338–AD, 2007–NM–291–AD, and 2007–NM–290–AD; Amendments 39–15325, 39–15326, 39–15327; ADs 2008–01–02, 2004–07–22 R1, and 90–25–05 R1]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited Model (Caribou) DHC–4 and (Caribou) DHC–4A Airplanes; and Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes

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

ACTION: Final rule; corrections.

SUMMARY: The FAA is correcting typographical errors in three existing airworthiness directives (ADs) that were published in the **Federal Register** on January 8, 2008 (73 FR 1269); January 7, 2008 (73 FR 1052); and January 7, 2008 (73 FR 1055). The errors resulted in incorrect docket numbers. One AD applies to all Viking Air Limited Model (Caribou) DHC–4 and (Caribou) DHC–4A airplanes. The other two ADs apply to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. The Viking Air AD requires doing a fluorescent penetrant inspection for cracking of certain upper engine mount bracket assemblies, and corrective actions if necessary. One of the Boeing ADs requires revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure. The other Boeing AD requires implementing a corrosion prevention and control program.

DATES: AD 2008–01–02 is effective January 23, 2008. ADs 2004–07–22 R1 and 90–25–05 R1 are effective January 22, 2008.

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

FOR FURTHER INFORMATION ON AD 2008–01–02, CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

FOR FURTHER INFORMATION ON ADS 2004–07–22 R1 AND 90–25–05 R1, CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: We have issued the ADs identified in the following table.

AFFECTED ADS

AD—	Affects—	And requires—
2008–01–02, amendment 39–15325 (73 FR 1269, January 8, 2008), issued December 20, 2007.	All Viking Air Limited Model (Caribou) DHC–4 and (Caribou) DHC–4A airplanes.	A fluorescent penetrant inspection (FPI) for cracking of certain upper engine mount bracket assemblies, and corrective actions if necessary.
2004–07–22 R1, amendment 39–15326 (73 FR 1052, January 7, 2008), issued December 26, 2007.	All Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.	Revising the FAA-approved maintenance inspection program to include inspections that will give no less than the required damage tolerance rating for each structural significant item, and repair of cracked structure.
90–25–05 R1, amendment 39–15327 (73 FR 1055, January 7, 2008), issued December 26, 2007.	All Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.	Implementing a corrosion prevention and control program. (That AD revised an earlier AD by removing future type-certificated models from the applicability.)

As published, those ADs specify incorrect docket numbers throughout the preamble and regulatory text. Docket numbers are assigned by the Federal Document Management System. We have been informed that incorrect docket numbers were assigned. The correct docket information is provided in the following table.

CORRECTED AD DOCKET NUMBERS

AD No.	Original Docket No.	Corrected Docket No.
AD 2008–01–02	FAA–2008–0410	FAA–2007–0410
2004–07–22 R1	FAA–2008–0411	FAA–2007–0411
AD 90–25–05 R1	FAA–2008–0412	FAA–2007–0412

Any commenter who submitted comments to an original, incorrect docket number should check Docket No. FAA–2007–0410, FAA–2007–0411, or FAA 2007–0412 on *www.regulations.gov* to determine whether the comments have been received and filed in the appropriate docket. If not, or if it is not possible to determine whether comments have been posted to the correct docket, the comments should be resubmitted using the correct docket number.

No other part of the preamble or regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of AD 2008–01–02 remains January 23, 2008. The effective date of AD 2004–07–22 R1 remains January 22, 2008. The effective date of AD 90–25–05 R1 remains January 22, 2008.

Correction

In the **Federal Register** of January 8, 2008, on page 1269, in the third column, the headings section of AD 2008–01–02 is corrected to read as follows:

''*[Docket No. FAA–2007–0410; Directorate Identifier 2007–NM–338–AD; Amendment 39–15325; AD 2008–01–02]*''

In the **Federal Register** of January 7, 2008, on page 1052, in the first column, the headings section of AD 2004–07–22 R1 is corrected to read as follows:

''*[Docket No. FAA–2007–0411; Directorate Identifier 2007–NM–291–AD; Amendment 39–15326; AD 2004–07–22 R1]*''

In the **Federal Register** of January 7, 2008, on page 1055, in the second column, the headings section of AD 90–25–05 R1 is corrected to read as follows:

''*[Docket No. FAA–2007–0412; Directorate Identifier 2007–NM–290–AD; Amendment 39–15327; AD 90–25–05 R1]*''

In the **Federal Register** of January 8, 2008, on page 1270, in the second and third columns, the Supplemental Information section of Docket No. FAA–2008–0410, Directorate Identifier 2007–NM–338–AD, is corrected to read as follows:

''* * * Include ''Docket No. FAA–2007–0410; Directorate Identifier 2007–NM–338–AD'' at the beginning of your comments. * * *

In the **Federal Register** of January 7, 2008, on page 1053, in the second column, the Supplemental Information section of Docket No. FAA–2008–0411, Directorate Identifier 2007–NM–291–AD, is corrected to read as follows:

''* * * Include ''Docket No. FAA–2007–0411; Directorate Identifier 2007–NM–291–AD'' at the beginning of your comments. * * *

In the **Federal Register** of January 7, 2008, on page 1056, in the third column, the Supplemental Information section of Docket No. FAA–2008–0412, Directorate Identifier 2007–NM–290–AD, is corrected to read as follows:

''* * * Include ''Docket No. FAA–2007–0412; Directorate Identifier 2007–NM–290–AD'' at the beginning of your comments. * * *

§ 39.13 [Corrected]

■ In the **Federal Register** of January 8, 2008, on page 1271, in the first column, paragraph 2. of PART 39—AIRWORTHINESS DIRECTIVES of AD 2008–01–02 is corrected to read as follows:

* * * * *

2008–01–02 Viking Air Limited (Formerly Bombardier, Inc.): Amendment 39–15325. Docket No. FAA–2007–0410; Directorate Identifier 2007–NM–338–AD.

* * * * *

In the **Federal Register** of January 7, 2008, on page 1053, in the third column, paragraph 2. of PART 39–AIRWORTHINESS DIRECTIVES of AD 2004–07–22 R1 is corrected to read as follows:

* * * * *

2004–07–22 R1 Boeing: Amendment 39–15326. Docket No. FAA–2007–0411; Directorate Identifier 2007–NM–291–AD.

* * * * *

■ In the **Federal Register** of January 7, 2008, on page 1057, in the first column, paragraph 2. of PART 39–AIRWORTHINESS DIRECTIVES of AD 90–25–05 R1 is corrected to read as follows:

* * * * *

90–25–05 R1 Boeing: Amendment 39–15327. Docket No. FAA–2007–0412; Directorate Identifier 2007–NM–290–AD.

* * * * *

Issued in Renton, Washington, on February 7, 2008.

Kevin Hull,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–2623 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0183; Directorate Identifier 2007–NM–146–AD; Amendment 39–15376; AD 2008–04–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

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

There has been a reported case of failure of a bracket (P/N 85217732–108) of the over-centering spring assembly inside the translating door of the forward baggage compartment. * * * Failure of the bracket caused the eyebolt at the bottom of the spring assembly to become loose, resulted in damage of the support beam during normal door handle movement. Damage of the support beam, which is dormant, in combination with failure of a doorstop attached to any remaining undamaged support beam will degrade the structural integrity of the door, resulting in possible depressurization or loss of the door.

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

DATES: This AD becomes effective March 20, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 20, 2008.

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

FOR FURTHER INFORMATION CONTACT: Pong K. Lee, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 13, 2007 (72 FR 63827). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There has been a reported case of failure of a bracket (P/N 85217732–108) of the over-centering spring assembly inside the translating door of the forward baggage compartment. This condition can exist on other translating doors on the aircraft. Investigation concluded that an insufficient gap between the bottom eyebolt and the barrel of the spring assembly caused an increase of tension load on the bracket and resulted in subsequent failure of the bracket. Failure of the bracket caused the eyebolt at the bottom of the spring assembly to become loose, resulted in damage of the support beam during normal door handle movement. Damage of the support beam, which is dormant, in combination with failure of a doorstop attached to any remaining undamaged support beam will degrade the structural integrity of the door, resulting in possible depressurization or loss of the door.

Corrective actions include a one-time inspection for damage of the spring support bracket and support beam of the forward baggage door, aft service door, and aft passenger door; repetitive inspections for integrity (corrosion, damage, cracking, and looseness or misalignment) of the doorstops of support beams found to be within damage limits; repair of support beams, or replacement of damaged brackets, support beams, or doorstops, as applicable; and removal of certain washers and nuts. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 29 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $11,600, or $400 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–04–04 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–15376. Docket No. FAA–2007–0183; Directorate Identifier 2007–NM–146–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 20, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes; certificated in any category; having serial numbers 4001 and 4003 through 4102.

Subject

(d) Air Transport Association (ATA) of America Code 52:

Reason

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

There has been a reported case of failure of a bracket (P/N 85217732–108) of the over-centering spring assembly inside the translating door of the forward baggage compartment. This condition can exist on other translating doors on the aircraft. Investigation concluded that an insufficient gap between the bottom eyebolt and the barrel of the spring assembly caused an increase of tension load on the bracket and resulted in subsequent failure of the bracket. Failure of the bracket caused the eyebolt at the bottom of the spring assembly to become loose, resulted in damage of the support beam during normal door handle movement. Damage of the support beam, which is dormant, in combination with failure of a doorstop attached to any remaining undamaged support beam will degrade the structural integrity of the door, resulting in possible depressurization or loss of the door.

Corrective actions include a one-time inspection for damage of the spring support bracket and support beam of the forward baggage door, aft service door, and aft passenger door; repetitive inspections for integrity (corrosion, damage, cracking, and looseness or misalignment) of the doorstops of support beams found to be within damage limits; repair of support beams, or replacement of damaged brackets, support beams, or doorstops, as applicable; and removal of certain washers and nuts.

Actions and Compliance

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

(1) Within 1,000 flight hours after the effective date of this AD, perform a one-time inspection for damage of the spring support bracket and support beams of the forward baggage door, aft service door, and aft passenger door, as applicable, in accordance with Bombardier Service Bulletin 84–52–51, Revision A, dated September 8, 2006. Replace any damaged bracket, support beam, or doorstop in accordance with the service bulletin, prior to further flight.

(i) If any support beam is damaged at only one spring location and the damage is within the limits defined in Bombardier Repair Drawing RD 8/4–52–202, Issue 1, dated December 2, 2005, do the actions specified in paragraphs (f)(1)(i)(A) and (f)(1)(i)(B) of this AD.

(A) Inspect each doorstop of the affected door for integrity in accordance with the service bulletin prior to further flight, and repeat the inspection thereafter at intervals not to exceed 400 flight hours, until the support beam is repaired as specified in paragraph (f)(1)(i)(B) of this AD or replaced in accordance with the service bulletin. If the doorstop does not meet integrity standards during any inspection required by this paragraph, before further flight, repair or replace the doorstop with a new or serviceable doorstop in accordance with the repair drawing.

(B) Within 5,000 flight hours after accomplishing the inspection described in paragraph (f)(1) of this AD, repair the support beam in accordance with the repair drawing or replace in accordance with the service bulletin. Doing the repair or replacement terminates the inspections required by paragraph (f)(1)(i)(A) of this AD.

(ii) If any support beam is damaged at one or two spring locations and any damage exceeds the limits defined in Bombardier Repair Drawing RD 8/4–52–202, Issue 1, dated December 2, 2005, prior to further flight, replace the damaged support beam with a new support beam in accordance with the service bulletin.

(iii) If any support beam is damaged at two spring locations and the damage is within the limits defined in Bombardier Repair Drawing RD 8/4–52–202, Issue 1, dated December 2, 2005, prior to further flight, repair the support beam in accordance with the repair drawing.

(2) Within 1,000 flight hours after the effective date of this AD, remove the nuts and washers at the bottom of the over-centering spring assemblies of the forward baggage door, aft service door, and aft passenger door by incorporating Modsum 4–155296, in accordance with Bombardier Service Bulletin 84–52–51, Revision A, dated September 8, 2006.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Pong K. Lee, Aerospace Engineer, New York ACO, FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7324; fax (516) 794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2007–05, effective April 24, 2007; Bombardier Service Bulletin 84–52–51, Revision A, dated September 8, 2006, including MHI Service Bulletin 8–MHI0084, Revision C, dated September 6, 2006; and Bombardier Repair Drawing RD 8/4–52–202, Issue 1, dated December 2, 2005, for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 84–52–51, Revision A, dated September 8, 2006; and Bombardier Repair Drawing RD 8/4–52–202, Issue 1, dated December 2, 2005; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

(3) 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 February 7, 2008.

Kevin Hull,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–2626 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0309; Airspace Docket No. 07–AEA–20]

Amendment of Class E Airspace; Gettysburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action modifies Class E Airspace at Gettysburg, PA. The existing controlled airspace from nearby Gettysburg Regional Airport 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 for the Gettysburg Hospital. This action will enhance the safety and management of Instrument Flight Rule (IFR) operations by providing the required controlled airspace to protect for this approach at Gettysburg, PA. Additionally this action imparts a technical correction to the airport name.

DATES: Effective 0901 UTC, June 05, 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 31, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0309; Airspace Docket No. 07–AEA–20, 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 at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; Telephone (404) 305–5610; 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 via *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*. or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or you may comment 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–2007–0309; Airspace Docket No. 07–AEA–20.'' 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 amends Class E5 airspace at Gettysburg, PA, providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 070 Point in Space (PinS) approach developed to facilitate helicopter arrival and departures at the Gettysburg Hospital in Gettysburg. Although Class E exists near the area, it is insufficient for the protection for this approach that will serve medical flights. Controlled airspace, known as Class E5 airspace, extending upward from 700 feet Above Ground Level (AGL) is required to encompass all Instrument Approach Procedures (IAPs) to the extent practical and for general Instrument Flight Rule (IFR) operations. The FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to modify existing Class E5 airspace by adding a 6-mile radius around the Point in Space Coordinates that serve the Gettysburg Hospital in Gettysburg, 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 17.1. The Class E designations listed in this document will be published subsequently in the Order.

In 1996, the airport experienced a name change from ''Gettysburg Airport and Travel Center'' to Gettysburg Regional Airport and this rule provides for that technical correction for this amended Class E5 airspace.

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 amends controlled airspace at Gettysburg, PA near the Gettysburg Hospital.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—DESIGNATION OF CLASS A, 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 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AEA PA E5 Gettysburg, PA [Amended]

Gettysburg Regional Airport, Gettysburg, PA
(Lat. 39°50′27″ N., long. 77°16′27″ W.)
Gettysburg Hospital Heliport
(Lat. 39°49′29″ N., long. 77°14′09″ W.)
Point in Space Coordinates
(Lat. 39°49′09″ N., long. 77°14′53″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Gettysburg Regional Airport and that airspace within a 6-mile radius of the Point in Space Coordinates (lat. 39°49′09″ N., long. 77°14′53″ W.) serving the Gettysburg Hospital.

* * * * *

Issued in College Park, Georgia, on January 30, 2008.

Barry A. Knight,

Acting Manager, Systems Support Group, Eastern Service Center.

[FR Doc. 08–615 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0153; Airspace Docket No. 07–AEA–12]

Amendment of Class E Airspace; Honesdale, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a direct final rule that modifies a Class E airspace area to support Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedures (IAPs) that serve the Honesdale Sports Complex Heliport, Honesdale, PA.

DATES: Effective 0901 UTC, February 14, 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.

FOR FURTHER INFORMATION CONTACT: Daryl Daniels, Airspace Specialist, System Support, AJO2–E2B.12, FAA Eastern Service Center, 1701 Columbia Ave., College Park, GA 30337; telephone (404) 305–5581; fax (404) 305–5572.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments in the **Federal Register** on December 13, 2007 (72 FR 70769–70771). The title of the document used the word ''Establishment'' of Class E Airspace. Although technically this action established additional controlled

airspace, because controlled airspace previously existed at Honesdale, the Title should have read, ''Amendment'' of Class E Airspace. The essence of the rule was not affected. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 14, 2008. No adverse comments were received, and thus this notice confirms that effective date.

Issued in College Park, GA on January 30, 2008.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–617 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0277; Airspace Docket No. 07–AEA–17]

Establishment of Class E Airspace; Seneca, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action established Class E Airspace at Seneca, 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 University of Pittsburg Medical Center (UPMC) Northwest 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 around Seneca, PA.

DATES: Effective 0901 UTC, June 5, 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 31, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0277; Airspace Docket No. 07–AEA–17, at the beginning of your comments. You must also submit and review received comments through the Internet at *http://www.regulations.gov*.

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

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

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

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

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's 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 FAA–2007–0277; Airspace Docket No. 07–AEA–17.'' 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 of Seneca, PA providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 033 Point in Space (PinS) approach developed for the UPMC Northwest Heliport. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights at the local hospitals. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rules (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent

practical. Therefore, the FAA is amending part 71 of Title 14, Code of Federal Regulations (14 CFR part 71), to establish a 6-mile radius Class E5 airspace at Seneca, 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 ''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 established controlled airspace near the UPMC Northwest Heliport in Seneca, 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 Seneca, PA [NEW]

UPMC Northwest Heliport
(Lat. 41°21′44″ N., long. 79°42′03″ W.)
Point in Space Coordinates
(Lat. 41°21′09″ N., long. 79°42′24″ 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°21′09″ N., long. 79°42′24″ W.) serving the UPMC Northwest Heliport.

* * * * *

Issued in College Park, Georgia, on January 30, 2008.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–614 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–0278; Airspace Docket No. 07–AEA–18]

Establishment of Class E Airspace; Cranberry Township, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Cranberry Township, 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 University of Pittsburgh Medical Center (UPMC) Passavant-Cranberry 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 around Cranberry Township, PA.

DATES: Effective 0901 UTC, June 5, 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 31, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2007–0278; Airspace Docket No. 07–AEA–18, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

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

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

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of

technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's 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–2007–0278; Airspace Docket No. 07–AEA–18.'' 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 Cranberry Township, PA providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 304 Point in Space (PinS) approach developed for the UPMC Passavant-Cranberry Heliport. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights at the local hospitals. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rules (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent practical. Therefore, the FAA is amending part 71 of Title 14, Code of Federal Regulations (14 CFR part 71) to establish a 6-mile radius Class E5 airspace at Cranberry Township, 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 ''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 UPMC Passavant-Cranberry Heliport in Cranberry Township, 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 Cranberry Township, PA [NEW]

UPMC Passavant-Cranberry Heliport
(Lat. 40°41′01″ N., Long. 80°05′50″ W.)
Point in Space Coordinates
(Lat. 40°40′20″ N., Long. 80°05′10″ 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°40′20″ N., Long. 80°05′10″ W.) serving the UPMC Passavant-Cranberry Heliport.

* * * * *

Issued in College Park, Georgia, on January 30, 2008.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–616 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2008–0050; Airspace Docket No. 07–ASO–28]

RIN 2120–AA66

Amendment of Using Agencies for Restricted Areas R–5303A, B, C; R–5304A, B, C; and R–5306A, C, D, E; NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the using agencies for restricted areas R–5303A, B, and C, Camp Lejeune, NC; R–5304A, B, and C, Camp Lejeune, NC; and R–5306A, C, D, and E, Cherry Point, NC, to reflect current organizational assignments and geographic responsibilities. This is an administrative change that does not alter the boundaries, designated altitudes, time of designation, or activities conducted within the restricted areas.

DATES: *Effective Date:* 0901 UTC, April 10, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

At the request of the U.S. Marine Corps, the FAA is amending 14 CFR part 73 to update the designated using agencies for restricted areas R–5303A, B, and C; R–5304A, B, and C; and R–5306A, C, D, and E in North Carolina. This action is the result of organizational realignments by the Marine Corps.

Section 73.53 of Title 14 CFR part 73 was republished in FAA Order 7400.8N, effective February 16, 2007.

The Rule

This action amends the names of the using agencies for the above restricted areas to replace the title ''Commanding General'' with ''Commanding Officer,'' and reflect the current division of airspace responsibilities between Marine Corps Air Station Cherry Point, NC, and Marine Corps Base Camp Lejeune, NC. This is an administrative change to reflect current organizational titles and geographic responsibilities. The change does not alter the boundaries, designated altitudes, time of designation, or activities conducted within the restricted areas. Therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 the 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 amends restricted areas in North Carolina.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 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.

§ 73.53 [Amended]

■ 2. § 73.53 is amended as follows:

* * * * *

R–5303A, R–5303B and R–5303C Camp Lejeune, NC [Amended]

Under Using agency, by removing the words ''USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC'' and inserting the words ''USMC, Commanding Officer, U.S. Marine Corps Base Camp Lejeune, NC.''

* * * * *

R–5304A, R–5304B and R–5304C Camp Lejeune, NC [Amended]

Under Using agency, by removing the words ''USMC, Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC'' and inserting the words ''USMC, Commanding Officer, U.S. Marine Corps Base Camp Lejeune, NC.''

* * * * *

R–5306A and R–5306C Cherry Point, NC [Amended]

Under Using agency, by removing the words ''Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC'' and inserting the words ''USMC, Commanding Officer, U.S. Marine Corps Air Station Cherry Point, NC.''

R–5306D and R–5306E Cherry Point, NC [Amended]

Under Using agency, by removing the words ''Commanding General, U.S. Marine Corps Air Station, Cherry Point, NC'' and inserting the words ''USMC, Commanding Officer, U.S. Marine Corps Base Camp Lejeune, NC.''

* * * * *

Issued in Washington, DC, on February 6, 2008.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–2758 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 36 and 40

RIN 3038–AC39

Amendments Pertinent to Registered Entities and Exempt Commercial Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting final regulations that effectuate the following amendments to the Commission's regulations. The amendments delegate the Commission's authority to issue special calls to exempt commercial markets to the Director of the Division of Enforcement and that Director's designees. The amendments clarify the process for listing, clearing, or implementing products or rules, including dormant products and rules, and amend the definition of emergency to clarify that persons other than persons comprising a registered entity's full governing board may declare an emergency on behalf of the governing board. The amendments also amend the approval period for designated contract market rules that may change a material term or condition of an enumerated agricultural futures or options contract. Lastly, the amendments clarify how far in advance of implementation registered entities must submit self-certified contracts and rules to the Commission, and identify three additional categories of rules that may be implemented without certification or Commission approval.

EFFECTIVE DATE: February 14, 2008.

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SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission published initial comprehensive final regulations for trading facilities on August 10, 2001 [1] to implement amendments introduced to the Commodity Exchange Act (CEA or Act) by the Commodity Futures Modernization Act of 2000 (CFMA).[2] The final regulations codified the procedural provisions common to exempt boards of trade and exempt commercial markets (ECM) operating pursuant to sections 5d and 2(h)(3) through (5) of the Act, respectively, in part 36 of the Commission's regulations. The final regulations also codified the procedural provisions common to designated contract markets (DCM), derivatives transaction execution facilities (DTEF), and derivatives clearing organizations (DCO) in part 40 of the Commission's regulations, and further established the regulatory framework necessary to implement and interpret the provisions of the CEA, as amended by the CFMA, pertinent to trading facilities.

The Commission recently proposed additional amendments to parts 36 and 40 of the Commission's regulations that, based upon its experience in administering the Act, will better implement certain provisions of the Act and provide clearer direction as to the Commission's regulatory requirements thereunder (August 2007 notice of proposed rulemaking).[3] The Commission received two comment letters in response to the **Federal Register** publication of the August 2007 notice of proposed rulemaking. The material issues raised in each comment letter are addressed in the following discussion of the final amendments.

II. Exempt Commercial Markets

ECMs are electronic trading facilities that offer a platform for executing or trading principal-to-principal transactions involving exempt commodities solely between persons that are eligible commercial entities (ECM transactions).[4] ECM transactions, pursuant to section 2(h)(3) of the Act, as amended by the CFMA, are subject to a qualified exemption from the Act that reserves the applicability of the Act's fraud and manipulation provisions as well as the Commission's regulations thereunder to such contracts.[5] In accord with this reservation of applicability, the CEA specifically authorizes the Commission's issuance of special calls for information to ECMs in order to, among other things, enforce the Act's antifraud and antimanipulation provisions.[6]

In July 2004, the Commission amended regulation 36.3(b), which governs the Commission's access to ECM transaction data, to improve the quality of accessible information relevant to its antifraud and antimanipulation authority.[7] In that rulemaking, the Commission stated that aberrant price behavior on ECMs may require further Commission investigation and the eventual use of special calls to identify wrongful conduct.[8] The authority to issue special calls to ECMs currently is delegated only to the Directors of the Division of Market Oversight (DMO) and the Division of Clearing and Intermediary Oversight (DCIO) or their designees.[9] Given that the Division of Enforcement is directly charged with the responsibility to enforce the provisions of the Act that apply to ECMs, and the importance of the authority to issue special calls to the Commission's ability to enforce its reserved antifraud and antimanipulation authority, the Commission is amending, as proposed, regulation 36.3 to expand the set of persons with delegated authority to issue ECM special calls to include the Director of the Division of Enforcement or that Director's designees.

In its comment letter submitted in response to the Commission's publication of the August 2007 notice of proposed rulemaking, the IntercontinentalExchange, Inc. (ICE), a Delaware corporation that, among other things, operates an ECM that predominantly lists energy commodities derivative contracts, emphasized that information subject to special calls may include confidential details of transactions that often reflect the proprietary trading activities of market participants.[10] Citing its prior experience providing information to the Division of Enforcement and the potential sensitive nature of the information that may be submitted, ICE requested that the exercise of ECM special call authority, by regulation, be restricted to certain senior Enforcement staff, or in the alternative, be subject to consideration and review by a restricted group of senior Enforcement staff. ICE argued that such restrictions would develop channels of communication between ECMs and staff from the Division of Enforcement that would be

[1] 66 FR 42256 (August 10, 2001).

[2] Pub. L. 106–554, 114 Stat. 2763 (December 21, 2000).

[3] 17 CFR parts 36 and 40, Amendments Pertinent to Registered Entities and Exempt Commercial Markets, 72 FR 45185 (August 13, 2007).

[4] 7 U.S.C. 2(h)(3).

[5] 7 U.S.C. 2(h)(4).

[6] 7 U.S.C. 2(h)(5)(B)(iii).

[7] 69 FR 43285 (July 20, 2004).

[8] *Id.* at 43289.

[9] The persons to whom the authority to issue special calls may be designated is not restricted by regulation. Nonetheless, pursuant to Commission practice, the persons who have been so designated by the Division Directors of DMO and DCIO have been limited to Deputy Directors, Associate Directors, Branch Chiefs and Chief Counsels of those Divisions.

[10] Letter from Johnathan H. Short, Senior Vice President and General Counsel, ICE, to the Commission's Office of the Secretariat (September 12, 2007) (on file with the Commission), available at *http://www.cftc.gov/stellent/groups/public/@lrfederalregister/documents/frcomment/07–010c001.pdf*.

particularly familiar with the type and working value of callable information. According to ICE, these procedural restrictions would facilitate the timely and efficient production of information by, for example, reducing the time spent on specifying the scope of particular productions.

The CEA specifically recognizes the value and sensitive nature of transaction data and expressly prohibits, with limited exceptions, the Commission's public disclosure of ''information that would separately disclose the business transactions or market positions of any person * * *'' [11] The Commission appreciates and will remain aware of the concerns raised by ICE. The Commission, however, will not adopt ICE's recommendation that special call authority be restricted by regulation because adequate controls are in place to ensure the effective and proper use of delegated authority.

The issuance of an ECM special call by Enforcement staff will be an agency action undertaken pursuant to delegated authority to act on behalf of the Commission. The exercise of the authority to issue or assign the authority to issue special calls under Commission regulation 36.3 will be the product of deliberation and substantial internal process and will involve the participation of the Division Director prior to the issuance of a special call. Pursuant to Commission practice with respect to the other divisions, Division of Enforcement staff that would be designated by the Director to exercise special calls should be limited to the Division's Deputy Directors, Associate Directors and Chief Counsel. Restricting, by regulation, the Division of Enforcement's authority to issue ECM special calls to certain senior Enforcement staff, or in the alternative, requiring that issuances be subject to consideration and review by a restricted group of senior Enforcement staff, in the judgment of the Commission, will not substantially facilitate the efficiencies referenced by ICE. Accordingly, the Commission is amending Commission regulation 36.3, as proposed, to expand the set of persons with delegated authority to issue ECM special calls to include the Director of the Division of Enforcement or that Director's designees.

[11] 7 U.S.C. 12(a)(1).

III. Amendments to Part 40 of the Commission's Regulations

A. Self-Certification, Approval, and Dormancy

The Commission applies the procedural requirements for listing, clearing or implementing initial submissions of contracts and rules (including rule amendments) to dormant contracts and rules, and with certain exceptions, requires DCMs and DCOs to certify or submit for Commission approval all products and rules prior to listing or implementation.[12] Part 40 of the Commission's regulations, however, currently does not clearly indicate that the procedural requirements for listing, clearing or implementing dormant contracts and rules are identical to the requirements established for initial submissions of contracts and rules that have never been certified with, or approved by, the Commission.[13] Furthermore, the current product and rule filing provisions of part 40 do not clearly indicate that DCMs and DCOs, in general, must choose either to comply with the approval process established in part 40, or in the alternative, the certification process established in part 40, prior to listing, clearing, or implementing any product or rule, including any product or rule that has become dormant.[14]

The Commission is herein adopting several amendments to address these matters. The Commission is amending regulations 40.2(a), 40.3(a), 40.4(a), 40.5(a) and 40.6(a) to clarify that the procedural requirements for listing, clearing or implementing dormant contracts and rules are identical to the requirements established for submissions of contracts and rules (including rule amendments) that have never been certified with, or approved by, the Commission. The Commission is also amending the above referenced regulations to clarify that a DCM or DCO in general must choose either to list, clear, or implement a product or rule, including any dormant product or rule, pursuant to the self-certification provisions of part 40 or, in the alternative, pursuant to the process established in part 40 for receiving the Commission's prior approval.[15]

B. Dormant Registered Entities, Contracts, and Rules

The Commission has applied the concept of dormancy to registered entities by defining a dormant market or clearing organization as a registered entity that has been designated by, or registered with, the Commission for a period of thirty-six months or more but has not served as a facility for the trading or clearing of transactions for a period of twelve consecutive calendar months.[16] The Commission recognizes that a significant period of inactivity can potentially have a negative impact on a registered entity's ability to implement rules and list and clear contracts in a manner that remains consistent with current market conditions, the Commission's regulations, and self-regulatory best practices.[17] Accordingly, the Commission has deemed that upon a registered entity becoming dormant, its rules and contracts also become dormant.[18]

In contrast to this view, the current language of the Commission's regulations implies that the earliest possible time that a rule can become dormant, regardless of whether a registered entity has entered into dormancy, is at the end of a twelve month rule implementation period.[19] Similarly, the current language of the Commission's regulations implies that the earliest possible time that a contract can become dormant, regardless of whether a registered entity has entered into dormancy and absent affirmative

[12] The Commission defines a dormant contract as a contract or product without open interest that, after the expiration of a thirty-six month development period following initial certification or approval, has not traded in the preceding twelve consecutive calendar months. 17 CFR 40.1(b). The Commission defines a dormant rule as a rule that has remained unimplemented for twelve consecutive calendar months following the rule's initial certification with, or approval by, the Commission. 17 CFR 40.1(f).

[13] This alignment of procedural requirements is based, in part, on the premise that certain contracts and rules, which have remained inactive or unimplemented for a significant period of time, may contain terms that are no longer consistent with the Commission's regulations or prevailing market conditions. 67 FR 62783, 62784 (October 9, 2002).

[14] The Commission's regulations do not require a DTEF to either certify or submit for Commission approval a product or rule prior to listing or implementation. However, a DTEF, which is generally subject to notice filing requirements, may choose to self-certify products or rules or submit them for Commission approval pursuant to the procedures established in part 40 of the Commission's regulations. *See* 17 CFR 37.7.

[15] Registered entities may voluntarily seek the Commission's approval for products, rules, and rule amendments. DCM rules that will materially change a term or condition of a contract with open interest that is based on an agricultural commodity enumerated in section 1a(4) of the Act, however, must be approved by the Commission prior to implementation. 7 U.S.C. 7a–2(c)(2)(B).

[16] *See* 17 CFR 40.1.

[17] *See* 47 FR 29515 (July 7, 1982).

[18] *See* 71 FR 1953, 1960 (January 12, 2006).

[19] The term ''rule'' is defined to include any registered entity (DCM, DTEF, or DCO) ''* * * rule, regulation, resolution, interpretation, stated policy, term and condition * * * in whatever form adopted, and any amendment or addition thereto or repeal thereof * * *'' 17 CFR 40.1(h).

action on the part of the registered entity, is at the end of a thirty-six month contract development period. The Commission therefore is revising the definition of a dormant product or contract, dormant rule, and dormant DCM, DTEF, and DCO in Commission regulation 40.1 to clearly establish that the dormancy of a registered entity will automatically and separately trigger the dormancy of that entity's contracts and rules.[20]

C. Definition of Emergency

The Commission's regulations give registered entities the ability to implement emergency rules in response to market disruptions without certifying or receiving the Commission's approval prior to implementation.[21] The current definition of emergency implies that the full governing board of a registered entity must determine whether particular developments constitute an emergency before the registered entity may operate under emergency procedures.[22] The Commission, in its August 2007 notice of proposed rulemaking, proposed to amend the definition of emergency in regulation 40.1(g) to clarify that certain persons other than persons that comprise a registered entity's full governing board may properly issue an emergency determination on behalf of the governing board. The proposed revision was precipitated by a New York Mercantile Exchange (NYMEX) comment letter (submitted in response to the publication of a procedurally unrelated notice of proposed rulemaking) that suggested that the full governing board of an exchange, under emergency conditions, may not be able to issue a determination in a timely manner to address emergency conditions.[23]

The Commission received one comment in response to its proposal to amend the definition of emergency. In its comment letter, the CME Group Inc., a DCM formed by the 2007 merger of the Chicago Mercantile Exchange Inc. and the Board of Trade of the City of Chicago, expressed its support for the proposed clarification.[24] CME Group based its support on the premise that an authorized committee or an exchange official may be better able to respond in the first instance to market disruptions that may quickly evolve into emergencies.

The Commission agrees with CME Group and NYMEX, and pursuant to a broader interpretation of the definition of emergency, has previously approved registered entity rules that delegate the authority to make an emergency determination to persons other than persons that comprise the full governing board. Accordingly, the Commission herein revises the definition of emergency in regulation 40.1(g) to clarify that duly authorized persons may determine whether a particular occurrence or circumstance is an emergency that ''requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions * * *''[25] The final amendments to the definition of emergency require, as proposed, that the authorization to act on behalf of the governing board be derived from registered entity rules that specify in detail: (1) The persons authorized to issue an emergency opinion on behalf of the governing board; and (2) the procedures for the exercise of such authority.[26]

D. Commission Review and Approval of Registered Entity Rules

In contrast to other registered entity rules that may be implemented pursuant to the self-certification process established in part 40, DCM rules that, as determined by the Commission, materially change a term or condition of a contract with open interest that is based on an agricultural commodity enumerated in section 1a(4) of the Act must be approved by the Commission prior to implementation.[27] Since a finding of materiality is by statute at the reasonable discretion of the Commission, part 40 currently affords DCMs the opportunity to request a materiality opinion from the Commission for rules that a submitting DCM characterizes as non-material. Upon request, the Commission will determine whether a DCM rule submitted under regulation 40.4(b)(9) at least ten business days prior to implementation is material within the meaning of section 5c(c) of the Act.[28]

DCMs often simultaneously request that agricultural rule changes be reviewed for materiality, and if found to be material, approved by the Commission. Commission regulation 40.5 does not specify when the approval period commences with respect to rules submitted for materiality review under the process framed by Commission regulation 40.4(b)(9).[29] To establish certainty, the Commission is amending regulation 40.5 to commence the rule approval period at the conclusion of the 10-day materiality review period under regulation 40.4(b)(9). As stated in the August 2007 notice of proposed rulemaking, the commencement of the approval period at this point is appropriate because determining a rule's consistency with the Act and the Commission's regulations thereunder requires an analysis that is qualitatively different from the analysis required to determine the materiality of the same rule within the meaning of section 5c(c) of the Act.[30]

E. Listing of Products and the Implementation of Registered Entity Rules

1. The Timing of Submissions

The Commission understands that there may be some confusion as to how far in advance of implementation registered entities must submit self-certified products and rules to the Commission. Commission regulations 40.2(a) and 40.6(a) provide that such submissions must be filed electronically with the Commission at or before the close of business on the business day preceding implementation. Questions have arisen as to whether these provisions refer to the Commission's business day or the business day of the submitting registered entity.

The Commission is adopting regulations to clarify that the specified date is the Commission's business day. For clarity and in order to ensure proper notice of certified products and rules, the Commission is defining business day in part 40 and adding language to Commission regulations 40.2(a) and 40.6(a) to expressly require the filing of certified submissions with the Commission at least one full Commission business day prior to

[20] The final amendments also clarify that only registered DCOs can be dormant.

[21] *See* 17 CFR 40.6(a)(2).

[22] *See* 17 CFR 40.1(g).

[23] *See* letter from James A. Newsome, President, NYMEX, to Jean A. Webb, Secretary of the Commission (September 26, 2005) (on file with the Commission), *available at http://www.cftc.gov/foia/comment05/foi05-004_1page2.htm.*

[24] *See* letter from Craig S. Donohue, Chief Executive Officer, CME Group, to David A. Stawick, Secretary of the Commission (September 12, 2007) (on file with the Commission), *available at http://www.cftc.gov/stellent/groups/public/@lrfederalregister/documents/frcomment/07-010c002.pdf.*

[25] 17 CFR 40.1(g).

[26] The Commission is further adopting, as proposed, amendments to the definition of emergency in Commission regulation 40.1(g) to clarify the definition's applicability to all registered entities, including DCOs.

[27] 7 U.S.C. 7a–2(c).

[28] *Id.*

[29] *See* 17 CFR 40.4(b) and 40.5(b).

[30] August 2007 notice of proposed rulemaking, at 45187.

implementation.[31] In addition, to ensure that the appropriate operating divisions of the Commission have the ability to access electronic copies of submissions at the time of filing, the Commission is amending the mandatory recipients of electronic submissions filed under regulations 40.2(a)(1) and 40.6(a)(2) to include the Secretary of the Commission at *submissions@cftc.gov,* the relevant branch chief at the regional office having local jurisdiction over the registered entity, and, for filings submitted by a designated contract market or registered derivatives transaction execution facility, DMO at *DMOSubmissions@cftc.gov.*

2. Implementing Registered Entity Rules Without Certification

a. Additional Rule Categories

The Commission's regulations generally permit a registered entity to implement a new or dormant rule without seeking prior Commission approval by certifying to the Commission that the rule complies with the Act and the Commission's regulations thereunder on the business day preceding implementation.[32] Registered entities, however, are not required to file certified submissions prior to implementing several categories of registered entity rules that are enumerated in Commission regulation 40.6(c)(2).[33] Registered entity rules that come within these categories typically are limited in scope and are implemented under enabling rules that have already been approved by, or certified with, the Commission. In order to lessen the burden placed on registered entities as well as better utilize Commission resources, the Commission is codifying several additional categories of registered entity rules that may be implemented without prior certification or Commission approval if subsequently included in a weekly notification of rule changes under regulation 40.6(c)(2). The categories of rules enumerated in Commission regulation 40.6(c)(2) are amended to include: (1) The initial listing of trading months that are consistent with previously approved or certified standards; (2) changes in lists of producers' brands or markings that are made pursuant to previously approved or certified standards or criteria relating to quality specifications; and (3) for existing delivery locations, changes in lists of approved delivery facilities and delivery service providers that are made pursuant to previously approved or certified standards or criteria.[34]

A registered entity's ability to notice file changes that relate to trading months under amended regulation 40.6(c)(2) only extends to trading months within currently established cycles of trading months and does not extend to the delisting or relisting of trading months. By way of example, assume that the currently established cycle of trading months for a particular contract is December, March, May, July and September. Under the final amendments, the listing of a new trading month, such as November, would not qualify for notice filing under regulation 40.6(c) while an earlier than anticipated (or delayed) listing of a July contract could properly be notice filed.[35] With respect to producer's brands or markings and delivery facilities and service providers, the Commission reviews the relevant enabling standards and criteria to ensure their consistency with cash market practices and to ensure that their terms do not unreasonably restrain trade by inappropriately prohibiting the open participation of certain producers, facilities or service providers.[36] The identification of producers' brands and enumerated delivery facilities and service providers at an existing delivery location does not alter certified or Commission approved qualifying standards or criteria, nor does it change exchange procedures that verify compliance with those standards or criteria. The final regulations will therefore require that the Commission be kept apprised of changes in lists of approved producers' brands or markings, changes in lists of delivery location delivery facilities and service providers, and the initial listing of trading months that are consistent with previously certified or approved standards through weekly notices of rule changes filed under regulation 40.6(c)(2) as opposed to requiring that such changes be certified with or approved by the Commission prior to implementation.[37]

b. Implementing Rules Without Notification

Rule changes that may appear in a weekly notification pursuant to Commission regulation 40.6(c)(2)(iv) also include ''[c]hanges to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.'' [38] The Commission currently receives substantially the same information under part 16 of the Commission's regulations, which specifies the daily reporting requirements that apply to DCMs.[39] In particular, regulation 16.01(b) stipulates that each reporting market must submit to the Commission on a daily basis various trade data, including trade volume, open interest and price information for all listed option strike prices, including discretionary prices.[40]

In January 2006, DMO staff granted no-action relief to permit DCMs to satisfy the regulation 40.6(c)(2)(iv) notification requirement by complying with the daily reporting requirements of regulation 16.01 of the Commission's regulations.[41] In order to codify the no-action relief granted by DMO and avoid duplicative regulatory requirements, the Commission is amending regulation 40.6(c)(2)(iv) and adding paragraph (G) to regulation 40.6(c)(3)(ii) to allow registered entities that are in compliance with regulation 16.01(b) to implement the specified changes relating to option contract strike prices without either prior approval, certification or inclusion in a weekly notification to the Commission.[42]

[31] These amendments are consistent with other Commission regulations that exclude the day on which a notice is given or an event occurs in computing time periods that begin upon the occurrence of that notice or event. *See* 17 CFR 1.3(b) and 10.5.

[32] *See* 17 CFR 40.6(a).

[33] 17 CFR 40.6(c)(2).

[34] Commission regulation 40.4(b)(2) identifies rules that are changes in lists of approved delivery facilities as immaterial. In conformance with the amendments to Commission regulation 40.6(c)(2), the Commission is amending regulation 40.4(b)(2) to identify rules that are changes to lists of approved delivery service providers as immaterial.

[35] The language of the final regulations for delivery months is different from the language that was proposed by the Commission in its August 2007 notice of proposed rulemaking. The final regulations discard redundant references to open interest and the delisting and relisting of trading months. The substantive effect of the final regulations, that is, allowing the initial listing of trading months (trading months that cannot have open interest or be delisted or relisted trading months) within the currently established cycle of trading months without prior certification or Commission approval, is equivalent to the substantive effect of the regulations and amendments proposed in the August 2007 notice of proposed rulemaking. *See* August 2007 notice of proposed rulemaking, at 45187 to 45188.

[36] *See* 17 CFR part 40, Appendix A (Application for Designation of Physical Delivery Futures Contracts).

[37] Registered entities must be able to cite clearly identifiable registered entity rules that establish the applicable enabling standards and criteria in any such submission made under Commission regulation 40.6(c)(2).

[38] 17 CFR 40.6(c)(iv).

[39] *See* 17 CFR part 16.

[40] 17 CFR 16.01(b).

[41] *See* CFTC Staff Letter 06–01 (January 9, 2006).

[42] In July of 2006, the Commission adopted final rules to permit the trading of futures contracts based on corporate debt securities. 71 FR 39541 (July 13, 2006) (Debt Futures Release). The Commission herein adopts, as proposed, a technical amendment that conforms regulation 40.6(c)(2)(iii) to the adoption of the Debt Futures Release by

The Commission is making a similar amendment for registered entity rules denoting changes to contract trading months within currently established cycles of trading months that may be implemented pursuant to a regulation 40.6(c)(2) notification filing.[43] As with rules that are changes to option contract strike prices, the Commission currently receives adequate notification of the same information under regulation 16.01(a). In order to avoid duplicative regulatory requirements, the Commission is adding paragraph (H) to regulation 40.6(c)(3)(ii) to provide that registered entities that are in compliance with regulation 16.01(a) may effect the initial listing of contract trading months within the currently established cycle of trading months without prior approval, certification or inclusion in a weekly notification to the Commission.[44]

V. Related Matters

A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the cost and benefits of the subject regulations. Section 15(a) further specifies that the costs and benefits of the regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The final regulations expand the set of persons delegated by the Commission with the authority to issue ECM special calls to include the Director of the Division of Enforcement and that Director's designees. The final regulations do not expand the basis for issuing ECM special calls; rather, they simply expand the set of persons authorized to issue such special calls. There are no regulatory costs imposed by this extension of delegated special call authority.

The final regulations clarify that a DCM or DCO must generally choose either to comply with the rule approval process established in part 40 of the Commission's regulations or, in the alternative, the certification process established in part 40, prior to listing or clearing any product, or implementing any rule, including any product or rule that has become dormant. The final regulations also clearly establish that the dormancy of a registered entity will automatically and separately trigger the dormancy of that entity's contracts and rules. These clarifications are consistent with current Commission practice, do not impose any regulatory cost, and serve the public interest by facilitating regulatory certainty for persons subject to the Act and the Commission's regulations thereunder.

The final regulations clarify that the definition of emergency allows persons other than persons comprising the full governing board of a registered entity to declare an emergency on behalf of the governing board. The final regulations expressly recognize that the full governing board of an exchange under emergency conditions may not be able to issue an opinion in a timely manner to address an emergency. Accordingly, the Commission's final definition of emergency in part 40 clearly permits duly authorized persons to determine whether a particular occurrence or circumstance is an emergency. The final regulations facilitate the ability of registered entities to undertake timely action in response to emergency events and thereby better protect market participants and the financial integrity of transactions executed and cleared on registered entities. The final regulations also limit the potential costs that may arise from any misuse of authority by requiring registered entities to adopt detailed procedural rules to effectuate the exercise of this delegated authority.

The final regulations clearly set forth the duration of the rule approval period for DCM rules that may change a material term or condition of a contract based on the agricultural commodities enumerated in section 1a(4) of the Act by commencing the rule approval period at the conclusion of the 10-day materiality review period under Commission regulation 40.4(b)(9). Commencing the approval period at this point gives the Commission time to effectively discharge its separate regulatory responsibilities to review registered entity rule changes for their impact on contracts with open interest and to determine whether such changes are consistent with the Act and the Commission's regulations thereunder. The amended review period is consistent with current Commission regulatory practice and should not place any additional cost or burden on submitting DCMs.

The final regulations address how far in advance of implementation registered entities must submit self-certified contracts and rules to the Commission pursuant to regulations 40.2(a) and 40.6(a) by clarifying that the date specified in those regulations refers to the Commission's business day. The final regulations ensure that there is at least one full Commission business day between the submission of a certified product or rule and such product or rule's listing or implementation. The final regulations provide regulatory clarity and impose no additional cost or burden.

The final regulations lessen the burden placed on registered entities as well as better utilize Commission resources by codifying several additional rule categories that may be implemented without prior certification or Commission approval if noticed to the Commission through other required filings or disclosure requirements or subsequently included in a weekly notification of rule changes to the Commission under regulation 40.6(c)(2). The final regulations add lists of approved producers' brands or markings, changes in lists of approved delivery facilities and delivery service providers, certain changes in contract trading months, and certain specified changes to option contract strike prices to the categories of rules may be implemented without prior certification or Commission approval, or as applicable, notification. Registered entity rules that come within these categories typically are limited in scope

replacing that regulation's reference to stock indexes with a reference to securities indexes, a general term that includes both equity and debt securities. Final Commission regulation 40.6(c)(2)(iii) also includes a reference to regulation 40.6(c)(3)(ii)(F) to alert registered entities that certain rule changes relating to securities indexes may be implemented pursuant to notification or without such notice if implemented under regulation 40.6(c)(3).

[43] The Commission is amending the heading of regulation 40.6, and that provision's references to DCMs and DCOs, to clarify its potential applicability to all registered entities, including DTEFs.

[44] In its comment letter, CME Group stated that permitting DCMs that comply with the reporting requirements of Commission regulations 16.01(a) and (b) to implement changes in the listing of trading months within currently established cycles of trading months and changes to certain option contract rules relating to strike prices, without certification or prior Commission approval, will avoid duplicative requirements and will facilitate the efficient use of Commission resources.

and are implemented under enabling rules that have already been certified with, or approved by, the Commission. Permitting their implementation without certification or approval, or as applicable, notification, avoids unnecessary or duplicative regulatory requirements and better utilizes the Commission's resources.

The Commission's August 2007 notice of proposed rulemaking analyzed the aforementioned costs and benefits. No relevant comments were received with respect to the Commission's analysis. After considering these factors, the Commission has determined to amend parts 36 and 40 of the Commission's regulations as set forth below.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their regulations on small businesses. The requirements related to the final amendments fall mainly on registered entities. The Commission has previously determined that registered entities are not ''small entities'' for the purposes of the RFA.[45] In addition, these final regulations, collectively, tend to relieve regulatory burdens. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions to be taken herein will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

When publicizing final regulations, the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The information collection requirements associated with the final regulations are administered under Office of Management and Budget control numbers 3038–0022 and 3038–0054. These final amendments to parts 36 and 40 of the Commission's regulations would not impose any new or additional recordkeeping or information collection requirement that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects

17 CFR Part 36

Commodity futures.

17 CFR Part 40

Commodity futures, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 2, 4, 5, 5a, 5b, 5c, 5d and 8a of the Act, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 36—EXEMPT MARKETS

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 7 U.S.C. 2, 5, 6, 6c, and 12a, as amended by the Commodity Futures Modernization Act of 2000, Appendix E of Public Law 106–554, 114 Stat. 2763 (2000).

■ 2. In § 36.3, revise paragraphs (b)(3)(ii) to read as follows:

§ 36.3 Exempt commercial markets.

* * * * *

(b) * * *

(3) * * *

(ii) The Commission hereby delegates, until the Commission orders otherwise, the authority to make special calls as set forth in Section 2(h)(5)(B)(iii) of the Act to the Directors of the Divisions of Market Oversight, the Division of Clearing and Intermediary Oversight, and the Division of Enforcement to be exercised by each such Director or by such other employee or employees as the Director may designate. The Directors may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

* * * * *

PART 40—PROVISIONS COMMON TO CONTRACT MARKETS, DERIVATIVES TRANSACTION EXECUTION FACILITIES AND DERIVATIVES CLEARING ORGANIZATIONS

■ 3. The authority citation for part 40 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a, 8 and 12a, as amended by appendix E of Pub. L. 106–554, 114 Stat. 2763A–365.

■ 4. In § 40.1, revise paragraph (a) through (g) to read as follows:

§ 40.1 Definitions.

* * * * *

(a) *Business day* means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m.; *business hour* means any hour between 8:15 a.m. and 4:45 p.m., Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays and federal holidays in Washington, DC.

(b) *Dormant contract or dormant product* means:

(1) Any agreement, contract, transaction, or instrument, or any commodity futures or option contract with respect to all future or option expiries that has no open interest and in which no trading has occurred for a period of twelve complete calendar months following a certification with, or approval by, the Commission; *provided, however*, that no contract or instrument under this paragraph (b)(1) initially and originally certified with, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be dormant; or

(2) Any commodity futures or option contract or other agreement, contract, transaction or instrument of a dormant registered entity; or

(3) Any commodity futures or option contract or other agreement, contract, transaction or instrument not otherwise dormant that a registered entity self-declares through certification to be dormant.

(c) *Dormant designated contract market* means any designated contract market on which no trading has occurred for a period of twelve complete calendar months; *provided, however*, no designated contract market shall be considered to be dormant if its initial and original Commission order of designation was issued within the preceding 36 complete calendar months.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization registered pursuant to Section 5b of the Act that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided, however*, no derivatives clearing organization shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 complete calendar months.

(e) *Dormant derivatives transaction execution facility* means any derivatives transaction execution facility on which no trading has occurred for a period of twelve complete calendar months; *provided, however*, no derivatives transaction execution facility shall be considered to be dormant if its initial and original Commission order of

[45] *See* 47 FR 18618 (April 30, 1982).

designation was issued within the preceding 36 complete calendar months.

(f) *Dormant rule* means:

(1) Any registered entity rule which remains unimplemented for twelve complete calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant registered entity.

(g) *Emergency* means any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts or transactions, including:

(1) Any manipulative or attempted manipulative activity;

(2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(3) Any circumstances which may materially affect the performance of agreements, contracts or transactions, including failure of the payment system or the bankruptcy or insolvency of any participant;

(4) Any action taken by any governmental body, or any other registered entity, board of trade, market or facility which may have a direct impact on trading; and

(5) Any other circumstance which may have a severe, adverse effect upon the functioning of a registered entity.

* * * * *

■ 5. In § 40.2, revise the heading and paragraphs (a) introductory text, (a)(1) and (a)(2) to read as follows:

§ 40.2 Listing and accepting products for trading or clearing by certification.

(a) Unless permitted otherwise by § 37.7 of this chapter, a designated contract market or a registered derivatives transaction execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 40.3 of this chapter or that remains dormant subsequent to being submitted under this section or approved under § 40.3 of this chapter. A registered derivatives clearing organization must comply with the submission requirements of this section prior to accepting for clearing a product that is not traded on a registered entity and has not been approved for clearing under § 40.5 of this chapter or that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this chapter. A submission shall comply with the following conditions:

(1) The registered entity has filed its submission electronically in a format specified by the Secretary of the Commission with the Secretary of the Commission at *submissions@cftc.gov*, the relevant branch chief at the regional office having local jurisdiction over the registered entity, and, for filings submitted by a designated contract market or registered derivatives transaction execution facility, the Division of Market Oversight at *DMOSubmissions@cftc.gov*;

(2) The Commission has received the submission at its headquarters by the open of business on the business day preceding the product's listing or acceptance for clearing; and

* * * * *

■ 6. In § 40.3, revise paragraph (a) introductory text to read as follows:

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* Pursuant to Section 5c(c) of the Act and §§ 37.7 and 38.4 of this chapter, a designated contract market or registered derivatives transaction execution facility may request that the Commission approve a new or dormant product prior to listing the product for trading, or if initially submitted under § 40.2 of this chapter, subsequent to listing the product for trading. A submission requesting approval shall:

* * * * *

■ 7. In § 40.4, revise paragraph (a) and (b)(2) to read as follows:

§ 40.4 Amendments to terms or conditions of enumerated agricultural contracts.

(a) Notwithstanding the provisions of this part, a designated contract market must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or dormant rule that, for a delivery month having open interest, would materially change a term or condition, as defined in § 40.1(i), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(4) of the Act, or of an option on such a contract or commodity.

* * * * *

(b) * * *

(2) For each delivery location, changes in lists of approved delivery facilities and delivery service providers, including weighmasters and inspectors, pursuant to previously set standards or criteria;

* * * * *

■ 8. In § 40.5, revise paragraphs (a) introductory text and (c) introductory text to read as follows:

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* Pursuant to Section 5c(c) of the Act and §§ 37.7, 38.4 and 39.4 of this chapter, a registered entity may request that the Commission approve a new or dormant rule prior to implementation, or if initially submitted under §§ 40.2 or 40.6 of this chapter, subsequent to implementation. A submission requesting approval shall:

* * * * *

(c) *Commencement and extension of time for review.* The Commission shall commence the review period in paragraph (b) of this section for a compliant submission under § 40.4(b)(9) ten business days after its receipt and further may extend the review period in paragraph (b) of this section for any approval request for:

* * * * *

■ 9. Amend § 40.6 as follows:

A. Remove the term ''designated contract market or registered derivatives clearing organization'' and add in its place the term ''registered entity'' in paragraphs (a)(2), (c)(1), and (c)(3)(i);

B. Remove the term ''designated contract market or a registered derivatives clearing organization'' and add in its place the term ''registered entity'' in paragraph (c) introductory text;

C. Remove the term ''designated contract markets and registered derivatives clearing organizations'' and add in its place the term ''registered entities'' in paragraph (c)(3) introductory text;

D. Remove the term ''contract market or a derivatives clearing organization's'' and add in its place the term ''registered entity'' in paragraph (c)(3)(ii)(B); and

E. In addition, revise the heading and paragraphs (a) introductory text, (a)(2), (c)(2)(iii), and (c)(2)(iv), and add paragraphs (c)(2)(vii) through (c)(2)(ix), (c)(3)(ii)(G) and (c)(3)(ii)(H) to read as follows:

§ 40.6 Self-certification of rules.

(a) *Required certification.* Unless permitted otherwise by § 37.7 of this chapter, a registered entity must comply with the following conditions prior to the implementation of any rule that has not obtained Commission approval under § 40.5 of this chapter or that remains dormant subsequent to being

submitted under this section or approved under § 40.5 of this chapter:

(1) * * *

(2) The registered entity has filed its submission electronically in a format specified by the Secretary of the Commission with the Secretary of the Commission at *submissions@cftc.gov*, the relevant branch chief at the regional office having local jurisdiction over the registered entity, and, for filings submitted by a designated contract market or registered derivatives transaction execution facility, the Division of Market Oversight at *DMOSubmissions@cftc.gov*, and the Commission has received the submission at its headquarters by the open of business on the business day preceding implementation of the rule; *provided, however*, rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation; and

* * * * *

(c) * * *

(2) * * *

(iii) *Index products*. Routine changes in the composition, computation, or method of selection of component entities of an index (other than routine changes to securities indexes to the extent that such changes are not described in paragraph (c)(3)(ii)(F) of this section) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms*. Changes to option contract rules, which may qualify for implementation without notice pursuant to paragraph (c)(3)(ii)(G) of this section, relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis;

* * * * *

(vii) *Approved brands*. Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(viii) *Delivery facilities and delivery service providers*. Changes in lists of approved delivery facilities and delivery service providers (including weighmasters, assayers, and inspectors) at a delivery location, pursuant to previously certified or Commission approved standards or criteria; or

(ix) *Trading Months*. The initial listing of trading months, which may qualify for implementation without notice pursuant to (c)(3)(ii)(H) of this section, within the currently established cycle of trading months.

(3) * * *

(ii) * * *

(G) *Option contract terms*. For registered entities that are in compliance with the daily reporting requirements of § 16.01(b) of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading Months*. For registered entities that are in compliance with the daily reporting requirements of § 16.01(a) of this chapter, the initial listing of trading months which are within the currently established cycle of trading months.

Issued in Washington, DC, on February 6, 2008, by the Commission.

David A. Stawik,

Secretary of the Commission.

[FR Doc. E8–2580 Filed 2–13–08; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. FDA–2008–N–0068]

Generally Recognized As Safe Substances; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending certain regulations regarding generally recognized as safe (GRAS) substances to remove references to FDA development of food-grade specifications in cooperation with the National Academy of Sciences (NAS, now the National Academies). This action is editorial in nature and is intended to ensure the accuracy of the agency's regulations.

DATES: This rule is effective February 14, 2008.

FOR FURTHER INFORMATION CONTACT: Daniel E. Folmer, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1274.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in part 184 (21 CFR part 184). Several sections in part 184 state that FDA is developing food-grade specifications in cooperation with the National Academy of Sciences (NAS, now the National Academies). However, the National Academies is no longer developing food-grade specifications for food additives and ingredients. Therefore, this rule removes the obsolete information.

The final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). These amendments remove obsolete information and are nonsubstantive. FDA therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary.

List of Subjects in 21 CFR Part 184

Food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

■ 1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 2. Section 184.1065 is amended by revising paragraph (b) to read as follows:

§ 184.1065 Linoleic acid.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use. The ingredient must also meet the specifications in § 172.860(b) of this chapter.

* * * * *

■ 3. Section 184.1140 is amended by revising paragraph (b) to read as follows:

§ 184.1140 Ammonium citrate, dibasic.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 4. Section 184.1155 is amended by revising paragraph (b) to read as follows:

§ 184.1155 Bentonite.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 5. Section 184.1165 is amended by revising paragraph (b) to read as follows:

§ 184.1165 n-Butane and iso-butane.

* * * * *

(b) The ingredients must be of a purity suitable for their intended use.

* * * * *

■ 6. Section 184.1240 is amended by revising paragraph (b) to read as follows:

§ 184.1240 Carbon dioxide.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 7. Section 184.1261 is amended by revising paragraph (b) to read as follows:

§ 184.1261 Copper sulfate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 8. Section 184.1262 is amended by revising paragraph (b) to read as follows:

§ 184.1262 Corn silk and corn silk extract.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 9. Section 184.1265 is amended by revising paragraph (b) to read as follows:

§ 184.1265 Cuprous iodide.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 10. Section 184.1287 is amended by revising paragraph (b) to read as follows:

§ 184.1287 Enzyme-modified fats.

* * * * *

(b) The ingredients must be of a purity suitable for their intended use.

* * * * *

■ 11. Section 184.1297 is amended by revising paragraph (b) to read as follows:

§ 184.1297 Ferric chloride.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 12. Section 184.1298 is amended by revising paragraph (b) to read as follows:

§ 184.1298 Ferric citrate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 13. Section 184.1307 is amended by revising paragraph (b) to read as follows:

§ 184.1307 Ferric sulfate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 14. Section 184.1307a is amended by revising paragraph (b) to read as follows:

§ 184.1307a Ferrous ascorbate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 15. Section 184.1307b is amended by revising paragraph (b) to read as follows:

§ 184.1307b Ferrous carbonate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 16. Section 184.1307c is amended by revising paragraph (b) to read as follows:

§ 184.1307c Ferrous citrate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 17. Section 184.1321 is amended by revising paragraph (b) to read as follows:

§ 184.1321 Corn gluten.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 18. Section 184.1322 is amended by revising paragraph (b) to read as follows:

§ 184.1322 Wheat gluten.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 19. Section 184.1323 is amended by revising paragraph (b) to read as follows:

§ 184.1323 Glyceryl monooleate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 20. Section 184.1324 is amended by revising paragraph (b) to read as follows:

§ 184.1324 Glyceryl monostearate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 21. Section 184.1355 is amended by revising paragraph (b) to read as follows:

§ 184.1355 Helium.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 22. Section 184.1386 is amended by revising paragraph (b) to read as follows:

§ 184.1386 Isopropyl citrate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 23. Section 184.1445 is amended by revising paragraph (b) to read as follows:

§ 184.1445 Malt syrup (malt extract).

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 24. Section 184.1449 is amended by revising paragraph (b) to read as follows:

§ 184.1449 Manganese citrate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 25. Section 184.1521 is amended by revising paragraph (b) to read as follows:

§ 184.1521 Monosodium phosphate derivatives of mono- and diglycerides.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 26. Section 184.1537 is amended by revising paragraph (b) to read as follows:

§ 184.1537 Nickel.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 27. Section 184.1540 is amended by revising paragraph (b) to read as follows:

§ 184.1540 Nitrogen.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 28. Section 184.1545 is amended by revising paragraph (b) to read as follows:

§ 184.1545 Nitrous oxide.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 29. Section 184.1553 is amended by revising paragraph (b) to read as follows:

§ 184.1553 Peptones.

* * * * *

(b) The ingredients must be of a purity suitable for their intended use.

* * * * *

■ 30. Section 184.1555 is amended by revising paragraph (c)(3) to read as follows:

§ 184.1555 Rapeseed oil.

* * * * *

(c) * * *

(3) In addition to limiting the content of erucic acid to a level not exceeding 2 percent of the component fatty acids, low erucic acid rapeseed oil and partially hydrogenated low erucic acid rapeseed oil must be of a purity suitable for their intended use.

* * * * *

■ 31. Section 184.1639 is amended by revising paragraph (b) to read as follows:

§ 184.1639 Potassium lactate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 32. Section 184.1655 is amended by revising paragraph (b) to read as follows:

§ 184.1655 Propane.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 33. Section 184.1764 is amended by revising paragraph (b) to read as follows:

§ 184.1764 Sodium hypophosphite.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 34. Section 184.1768 is amended by revising paragraph (b) to read as follows:

§ 184.1768 Sodium lactate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 35. Section 184.1769a is amended by revising paragraph (b) to read as follows:

§ 184.1769a Sodium metasilicate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 36. Section 184.1848 is amended by revising paragraph (b) to read as follows:

§ 184.1848 Starter distillate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 37. Section 184.1851 is amended by revising paragraph (b) to read as follows:

§ 184.1851 Stearyl citrate.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 38. Section 184.1854 is amended by revising paragraph (b) to read as follows:

§ 184.1854 Sucrose.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 39. Section 184.1859 is amended by revising paragraph (b) to read as follows:

§ 184.1859 Invert sugar.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 40. Section 184.1865 is amended by revising paragraph (b) to read as follows:

§ 184.1865 Corn syrup.

* * * * *

(b) The ingredient meets the specifications as defined and determined in § 168.120(b) or § 168.121(a) of this chapter, as appropriate.

* * * * *

■ 41. Section 184.1923 is amended by revising paragraph (b) to read as follows:

§ 184.1923 Urea.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

■ 42. Section 184.1950 is amended by revising paragraph (b) to read as follows:

§ 184.1950 Vitamin D.

* * * * *

(b) Vitamin D_2 and vitamin D_3 as crystals meet the specifications of the Food Chemicals Codex, 3d Ed. (1981), pp. 344 and 345, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection 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*. Vitamin D_2 resin and vitamin D_3 resin must be of a purity suitable for their intended use.

* * * * *

■ 43. Section 184.1984 is amended by revising paragraph (b) to read as follows:

§ 184.1984 Zein.

* * * * *

(b) The ingredient must be of a purity suitable for its intended use.

* * * * *

Dated: February 8, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E8–2809 Filed 2–13–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 702

[TD 9382]

RIN 1545–BH41

Payments From the Presidential Primary Matching Payment Account

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the financing of presidential primary campaigns. The temporary regulations relate to Treasury procedures for making payments from the Presidential Primary Matching Payment Account (Primary Account). These temporary regulations affect all candidates eligible to receive payments from the Primary Account. The text of the temporary regulations also serves as the text for the proposed regulations (REG–149475–07) set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on February 14, 2008.

Applicability Date: For dates of applicability, see §§ 702.9037–1(b), 702.9037–1T(b), 702.9037–2(e) and 702.9037–2T(c).

FOR FURTHER INFORMATION CONTACT: Karla M. Meola at (202) 622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6096 of the Internal Revenue Code (Code), individuals whose income tax liability for the taxable year is $3 or more may designate $3 for the Presidential Election Campaign Fund (Fund) on their tax returns. Section 9006(a) establishes the

Fund and requires the Treasury Secretary (Treasury) to transfer amounts designated under section 6096 to the Fund. Three types of payments are made from the Fund: (1) Payments to the national committee of each major and minor party, (2) payments to the eligible candidates of a political party for President and Vice President, and (3) payments to eligible candidates seeking nomination for election to be President. See sections 9008(b)(3), 9006(b) and 9037(b).

Section 9008 requires the Treasury to maintain a separate account in the Fund for payments to the national committee of each major and minor party for their presidential nominating conventions, to be made upon receipt of certification by the Federal Election Commission (Commission). Section 9008(a) directs the Treasury to fund this account before making payments under section 9006(b) to eligible candidates for President and Vice President. Section 9037(a) directs the Treasury to establish within the Fund an additional separate account, the Primary Account. Section 9037(a) also directs the Treasury to make deposits to the Primary Account only after funds ''are available'' for payments for the nominating conventions under section 9008 and the general election under section 9006. Section 9037(b) requires the Treasury to transfer amounts certified by the Commission from the Primary Account to candidates seeking nomination for President. Section 9037(b) also provides that in making such transfers to candidates of the same political party, the Treasury will seek to achieve an equitable distribution of available funds, and will take into account, in seeking to achieve an equitable distribution, the sequence in which certifications from the Commission are received. Under section 9032(6), primary candidates may receive payments under section 9037(b) beginning on the first day of the calendar year of the presidential general election.

Section 702.9037–2(c) establishes a ''shortfall rule,'' which provides that if the amount certified by the Commission for primary candidates in a calendar month exceeds the balance in the Primary Account on the last day of the calendar month, the amount paid to a candidate for that month from the Primary Account is determined by multiplying the amount certified by the Commission for the candidate during that month by the ratio of the balance in the Primary Account on the last day of the calendar month over the total amount certified by the Commission for all the candidates during that month. Any amount certified by the Commission, but not paid to a candidate because of the operation of this shortfall rule, is treated as an amount certified by the Commission for that candidate during the succeeding calendar month.

Notice 96–13 (1996–1 CB 366) announced a change in the payment procedures contained in § 702.9037–2(c). The notice stated that when the Primary Account is in a shortfall position, the Treasury may make an additional payment between regular payment dates promptly after funds are available. Such payment is determined by multiplying the amount certified by the Commission for the candidate in month 1 by the ratio of the balance in the Primary Account (but not to exceed the shortfall) on the 15th day of month 2 (or the first business day thereafter if the 15th is not a business day) over the total amount certified by the Commission for all the candidates in month 1. Notice 96–13 stated that the regulations would be amplified to reflect these changed procedures and that the revised regulations would have an effective date of February 2, 1996. See § 601.601(d)(2)(ii)(*b*).

Notice 2007–96 (2007–49 IRB 1091) superseded Notice 96–13 and announced that the procedures for making payments from the Primary Account would be changed. The notice also announced that the Treasury intended to modify the regulations under section 9037 to reflect the changed procedures. In compliance with section 7805(b)(1)(C), and as stated in Notice 2007–96, pursuant to Notice 96–13, the effective date of these amendments to the regulations would be February 2, 1996.

Explanation of Provisions

The regulations under section 9037 were promulgated in 1991 and provide procedures for administering the Primary Account. The procedures specified in these regulations have not kept pace with technological changes that allow the Primary Account to be administered and operated more efficiently. For example, the regulations do not provide for more than monthly payments in the event of a shortfall as contemplated by Notice 96–13. Accordingly, the temporary regulations remove these outdated administrative procedures. Concurrently with the issuance of these temporary regulations the Internal Revenue Service is publishing a revenue procedure specifying revised procedures for administering the Primary Account. These revised procedures allow weekly payments from the Primary Account to candidates.

Effective/Applicability Date

These temporary regulations apply to payments from the Primary Account on or after February 2, 1996.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analysis section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rule section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Karla M. Meola, Office of the Associate Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 702

Campaign funds.

Amendments to the Regulations

■ Accordingly, 26 CFR part 702 is amended as follows:

PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

■ **Paragraph 1.** The authority citation for part 702 continues to read in part as follows:

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

■ **Par. 2.** Section 702.9037–1 is amended as follows:

■ 1.The undesignated text is designated as paragraph (a).

■ 2. Paragraph (b) is added.

The revision reads as follows:

§ 702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.

* * * * *

(b) *Effective/applicability date.* These regulations apply to the Primary Account before February 2, 1996.

■ **Par. 3.** Section 702.9037–1T is added to read as follows:

§ 702.9037–1T Transfer of amounts to the Presidential Primary Matching Payment Account (temporary).

(a) *In general.* The Secretary will deposit amounts into the Presidential Primary Matching Payment Account (Primary Account) only to the extent that there are amounts in the Presidential Election Campaign Fund (Fund) after the transfers prescribed by § 701.9006–1(c) and (d). The Secretary will make this deposit promptly from amounts that have actually been transferred to the Fund under § 701.9006–1(a). Any amounts in the Primary Account after October 31 following a presidential election will be returned to the Fund for the purpose of making the transfers prescribed by § 701.9006–1(c), (d), and (f) for the next presidential election.

(b) *Effective/applicability date.* (1) These regulations apply to the Primary Account on or after February 2, 1996.

(2) *Expiration Date.* This section expires on February 11, 2011.

■ **Par. 4.** Section 702.9037–2 is amended by adding paragraph (e) to read as follows:

§ 702.9037–2 Payments from the Presidential Primary Matching Payment Account.

* * * * *

(e) *Effective/applicability date.* These regulations apply to the Primary Account before February 2, 1996.

■ **Par. 5.** Section 702.9037–2T is added to read as follows:

§ 702.9037–2T Payments from the Presidential Primary Matching Payment Account (temporary).

(a) *In general.* Pursuant to section 9036, the Federal Election Commission (Commission) will certify to the Secretary the full amount of payment to which a candidate is entitled under section 9034. The Secretary will pay promptly, but not before the start of the matching payment period under section 9032(6), the amounts certified by the Commission from the Presidential Primary Matching Payment Account (Primary Account) to the candidate.

(b) *Additional guidance.* The Internal Revenue Service may publish guidance in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*) of this chapter) prescribing additional rules and procedures for the Primary Account.

(c) *Effective/applicability date.* (1) These regulations apply to the Primary Account on or after February 2, 1996.

(2) *Expiration Date.* This section expires on February 11, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: February 1, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 08–674 Filed 2–11–08; 12:09 pm]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R08–RCRA–2006–0501; FRL–8524–7]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference of Approved Hazardous Waste Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the federal program. EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State regulations that will be subject to EPA's inspection and enforcement. This rule codifies in the regulations the prior approval of North Dakota's hazardous waste management program and incorporates by reference authorized provisions of the State's regulations. In addition, this document corrects errors made in the **Federal Register** authorization documents for North Dakota published on June 25, 1990 and September 26, 2005.

DATES: This final authorization will become effective on April 14, 2008, unless the EPA receives adverse written comment by March 17, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the immediate final rule in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of authorized provisions in the North Dakota statutes and regulations contained in this rule is approved by the Director of the Federal Register as of April 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2006–0501, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: daly.carl@epa.gov.*
- *Fax:* (303) 312–6341.
- *Mail:* Send written comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery or Courier:* Deliver your comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2006–0501. EPA's policy is that all comments received will be included in the public docket without change, 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 federal web site, (*http://www.regulations.gov*) 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 or 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 either electronically through *www.regulations.gov* or in hard copy at: EPA Region 8, from 9 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, contact: Carl Daly, phone number (303) 312–6416, or, the North Dakota Department of Health (NDDH) from 9 a.m. to 4 p.m., 1200 Missouri Ave., Bismarck, ND 58504–5264, contact: Curt Erickson, phone number (701) 328–5166. The public is advised to call in advance to verify the business hours.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312–6416, *daly.carl@epa.gov.*

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IV. Statutory and Executive Order Reviews

I. Authorization of Revisions to North Dakota's Hazardous Waste Program

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that North Dakota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant North Dakota final authorization to operate its hazardous waste program with the changes described in the authorization application. North Dakota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian country, and for carrying out those portions of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in North Dakota, including issuing permits, until North Dakota is authorized to do so.

C. What Is the Effect of This Authorization Decision?

The effect of this decision is that facilities in North Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements. North Dakota has primary enforcement responsibility under its State hazardous waste program for violations of the program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to conduct inspections and require monitoring, tests, analyses, or reports; and enforce RCRA requirements and suspend or revoke permits.

This action does not impose additional requirements on the regulated community because the regulations for which North Dakota is being authorized are already effective and are not changed by today's action.

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

EPA did not publish a proposal before today's rule because this action is a routine program change, and we do not expect comments opposing this approval. We are providing an opportunity for public comment at this time. In addition, in the proposed rules section of today's **Federal Register**, there is a separate document that proposes to authorize the State program changes. If we receive comments opposing this authorization, that document will serve as a proposal to authorize the changes.

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

If EPA receives comments opposing this authorization, we will withdraw this rule by publishing a notice in the **Federal Register** before the rule becomes effective. We then will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this action, you must do so at this time.

If we receive comments opposing authorization of only a particular change to the State hazardous waste program, we will withdraw that part of the rule. However, the authorization of program changes that are not opposed by any comments will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

F. For What Has North Dakota Previously Been Authorized?

North Dakota initially received final authorization on October 5, 1984, effective October 19, 1984 (49 FR 39328) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on June 25, 1990, effective August 24, 1990 (55 FR 25836), May 4, 1992, effective July 6, 1992 (57 FR 19087), April 7, 1994, effective June 6, 1994 (59 FR 16566), January 19, 2000, effective March 20, 2000 (65 FR 02897), and September 26, 2005, effective November 25, 2005 (70 FR 56132).

G. What Changes Are We Authorizing With This Action?

On June 2, 2004, September 2, 2004, and October 26, 2004, North Dakota submitted final revision applications, seeking authorization of program changes in accordance with 40 CFR 271.21. During the approval of the revisions in the September 26, 2005 **Federal Register**, we inadvertently missed the rules being approved in this **Federal Register**. We now make an immediate final decision, subject to receipt of written comments opposing this action, that North Dakota's hazardous waste program revision satisfies all of the requirements necessary for final authorization. Therefore, we propose to grant North Dakota final authorization for the following program changes:

1. Program Revision Changes for Federal Rules

North Dakota seeks authority to administer the federal requirements that are listed below (the Federal Citation is followed by the analog from the North Dakota Administrative Code (NDAC), Article 33–24, as revised December 1, 2003): Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes (59 FR 47982, 09/19/94 and 60 FR 00242, 01/03/95) (Checklists 137 and 137.1)/33–24–01–09 introductory paragraph, 33–24–01–09.2, 33–24–01–10.1 and 10.2, 33–24–01–11 introductory paragraph, 33–24–01–12 introductory paragraph, 33–24–01–12.1 and 12.2, 33–24–02–02.5.a.(3), 33–24–05–01.6.f, 33–24–05/Appendices VIII, and XXVIII, 33–24–05–204.1, 33–24–05–250.3.c.(2), 33–24–05–250.5.d, 33–24–05–251.1, 33–24–05–251.10, 33–24–05–256.1.a, 33–24–05–256.1.b introductory paragraph, 33–24–05–256.1.c introductory paragraph, 33–24–05–256.1.e thru 256.1.j, 33–24–05–256.2.c.(2), 33–24–05–256.2.d.(4), 33–24–05–256.4 and .4.a, 33–24–05–258.1, 33–24–05–258.4.a.(1) and (2), 33–24–05–258.4.b.(1), 33–24–05–278.1 thru .5, 33–24–05–280.1 thru 280.6, 33–24–05–280/Table, 33–24–05–281, 33–24–05–282.1, 33–24–05–282.1/Tables 1, 33–24–05–282.3.b, 33–24–05–282.4, 33–24–05–283, 33–24–05–283/Table CCW, 33–24–05–285.2.b, 33–24–05–286, 33–24–05–288, 33–24–05–288/Table UTS, 33–24–05–525.4.a, 33–24–05–525.4.c, 33–24–05–525.4.c.(1), 33–24–05–525.4.c.(1)(a), 33–24–05–525.4.c.(2), 33–24–06–16.5; Kraft Mill Steam Stripper Condensate Exclusion (63 FR 18504, 04/15/98) (Checklist 164)/33–24–02–04.1.o; CAMU Amendments (67 FR 02962, 01/22/02) (Checklist 196)/33–24–01–04, 33–24–01–04.99, 33–24–05–550.1 and .2, 33–24–05–551.1, 33–24–05–552.1 thru 552.1.e, 33–24–05–552.2.a thru 33–24–05–552.11, 33–24–05–554.1.a and .b, 33–24–05–555.1 thru 555.7; Recycled Used Oil Management Standards; Clarification (68 FR 44659, 07/30/03) (Checklist 203)/33–24–02–05.10, 33–24–05–610.9, 33–24–05–674, 33–24–05–674.2 thru 674.2.d.

2. State-Initiated Changes

North Dakota has made amendments to its regulations that are not directly related to any of the federal rules addressed in Item G.1 above. These State-initiated changes are either conforming changes made to existing authorized provisions, or the adoption of provisions that clarify and make the State's regulations internally consistent. The State's regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the federal laws and regulations. These State-initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the North Dakota Administrative Code (NDAC), Article 33–24, as revised December 1, 2003, (unless otherwise indicated): 33–24–01–03; 33–24–01–04.5 ''Administrator'' or ''regional administrator''; 33–24–01–07; 33–24–01–13 introductory paragraph and .1 through .4; 33–24–01–13.5; 33–24–01–14; 33–24–01–15; 33–24–02–01.1.b through .d; 33–24–02–04.1 introductory paragraph and .1.a through .e; 33–24–02–04.2 introductory paragraph; 33–24–02–04.2.i; 33–24–02–04.3 and .4.a introductory paragraph; 33–24–02–05.5.b; 33–24–02–05.7.b; 33–24–02–18.1 through .2; 33–24–02–18.4; 33–24–02–19.2.b(3)(a); 33–24–03–02.1 and .2; 33–24–03–02.3.c; 33–24–03–07.1.a and .b; 33–24–03–13.2, (except the phrase ''March first of each even-numbered year''); 33–24–03–14.1 introductory paragraph; 33–24–03–14.1.a and .b; 33–24–03–14.2; 33–24–03–14.3; 33–24–03–15.2 introductory paragraph; 33–24–03–16.1; 33–24–03–17; 33–24–03–20; 33–24–03–40; 33–24–04–04.4.a and .b; 33–24–04–04.6.a(3)(c) and .6.a(4); 33–24–04–04.6.c(1) and (2); 33–24–04–04.6.d(1) and (2); 33–24–04–04.7.a and .b; 33–24–04–04.8.b(3); 33–24–04–06.3.a; 33–24–05–01.5; 33–24–05–01.8; 33–24–05–29.6; 33–24–05–40.2.j through .n; 33–24–05–40.2.o and .p; 33–24–05–42 introductory paragraph; 33–24–05–44 introductory paragraph; 33–24–05–50; 33–24–05–51, (except Table 1); 33–24–05–61.1 introductory paragraph and .1.a; 33–24–05–63; 33–24–05–64; 33–24–05–67.1 through .2 introductory paragraph; 33–24–05–67.4.c and .d; 33–24–05–74.1 and .2 introductory paragraph; 33–24–05–77.6.a introductory paragraph; 33–24–05–77.6.a(1) introductory paragraph and (a); 33–24–05–77.6.a(1)(c); 33–24–05–77.6.a(2) introductory paragraph and (a); 33–24–05–77.6.a(2)(c); 33–24–05–77.6.b through .i; 33–24–05–77.6.k; 33–24–05–79.1.a(1) and (2); 33–24–05–79.2.a(1) and (2); 33–24–05–79.6.a and .b; 33–24–05–79.6.c introductory paragraph; 33–24–05–79.6.c(2) and (3); 33–24–05–79.6.d and .e; 33–24–05–79.6.g; 33–24–05–80.1; 33–24–05–81.1; 33–24–05–81.9; 33–24–05–81.10; 33–24–05–93; 33–24–05–105; 33–24–05–108.2.a; 33–24–05–118; 33–24–05–119.1 introductory paragraph; 33–24–05–119.1.a through .c; 33–24–05–119.2; 33–24–05–119.5; 33–24–05–120.1 through .3; 33–24–05–121; 33–24–05–122.1 through .2.a; 33–24–05–122.2.c and .d; 33–24–05–122.3; 33–24–05–123.1 through .3; 33–24–05–124; 33–24–05–125; 33–24–05–131.1 introductory paragraph; 33–24–05–131.1.a and .b; 33–24–05–132.1; 33–24–05–165.1.a; 33–24–05–177.1 introductory paragraph through .2.c; 33–24–05–177.5 introductory paragraph; 33–24–05–177.5.b; 33–24–05–178.1; 33–24–05–182; 33–24–05–183.1 introductory paragraph; 33–24–05–183.4, (except .4.a(2)); 33–24–05–271.1; 33–24–05–406.1.a; 33–24–05–435; 33–24–05–476; 33–24–05–501; 33–24–05–504.2.a and .b; 33–24–05, Appendices III and IV; 33–24–06–01.2.b(9), (except .2.b(9)(a)(4) and .2.b(9)(c)); 33–24–06–01.2.c; 33–24–06–01.10; 33–24–06–03.2 and .3; 33–24–06–04.10.c; 33–24–06–04.12.f and .j; 33–24–06–06.1; 33–24–06–08.2; 33–24–06–14.5.b(1)(a); 33–24–06–14.5.c(2)(b); 33–24–06–14.6; 33–24–06–17.2.u(2)(a); 33–24–06–17.2.v(2); 33–24–06–17.3, (except .d(2)); 33–24–06–18.2 introductory paragraph through .2.c(6); 33–24–07–05.2.b; 33–24–07–06.3.a(5) and (6).

Since the base program, North Dakota has removed certain provisions from the authorized program regulations which resulted in the clarification of the State's program. These provisions have been reviewed and we have determined that it is appropriate for the State to remove them and that their removal has no impact on the equivalency or consistency with the federal program. The provisions removed were NDAC sections 33–24–05–116.1.b, .c, and .e, and 33–24–05–251.2, as found in the December 1, 1988 version of the regulations; and 33–24–06–17.2.v.(3)(b) and (c), 33–24–06–17.2.z, and 33–24–06–20, as found in the January 1, 1984 version of the regulations.

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

We consider the following State requirements to be more stringent than the federal requirements: 33–24–03–12.1.a(1) and (2), because North Dakota subjects generators to full status rather than interim status standards; 33–24–05–108.2.a., because North Dakota requires facilities to perform daily inspections of overfill and spill control equipment rather than allowing the facility to determine the inspection frequency.

There are no requirements that are broader-in-scope than the federal program in these revisions.

North Dakota's rules, promulgated pursuant to this application, contain several errors which may create confusion within the regulated community. EPA has determined that the errors associated with the issues do not pose implementation or enforcement problems. Therefore, EPA will approve this application with the understanding that the State will correct these items during its next rulemaking. These errors are at the following citations within the North Dakota Administrative Code (NDAC), revised December 1, 2003: 33–24–05–278.1, 33–24–05–552.5.d.(4)(a), 33–24–05–552.5.d.(4)(e).

I. Who Handles Permits After the Authorization Takes Effect?

North Dakota will issue and administer permits for all the provisions for which it is authorized. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. EPA will transfer any pending permit applications, completed permits, or pertinent file information to North Dakota within 30 days of this approval. We will not issue any more new permits or new portions of permits for the provisions listed in section G. above after the effective date of this authorization. EPA and North Dakota have agreed to joint permitting and enforcement for those HSWA requirements for which North Dakota is not yet authorized.

J. How Does This Action Affect Indian Country (18 U.S.C. 1151) in North Dakota?

North Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of North Dakota:

a. Fort Totten Indian Reservation

b. Fort Berthold Indian Reservation

c. Standing Rock Indian Reservation

e. Turtle Mountain Indian Reservation

2. Any land held in trust by the U.S. for an Indian tribe, and

3. Any other land, whether on or off a reservation that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the RCRA program in these lands.

II. Corrections

A. Corrections to June 25, 1990 (55 FR 25836) Authorization Document

There were four sections of the North Dakota Administrative Code (NDAC) that were incorrectly authorized as part of the authorization notice published June 25, 1990 (55 FR 25836). The State provisions 33–24–05–254, 33–24–05–255, 33–24–05–282.2, and 33–24–05–284.1 through .7 should have been excluded from the authorized program as non-delegable provisions. These State provisions are analogous to the following Part 268 sections for which States are not authorized because decisions made pursuant to the sections require examination of national concerns: 268.5 (case-by-case effective date extensions), 268.42(b) (application for alternate treatment method) and 268.44(a)–(g) (general treatment standard variances). ''No migration'' petitions under 268.6 are also handled by EPA.

B. Corrections to September 26, 2005 (70 FR 56132) Authorization Document

There were typographical errors and omissions published as part of the September 26, 2005 (70 FR 56132) authorization notice for North Dakota. The corrections for the affected entries are as follows (the corrections have been italicized):

1. In the entry for Checklist 156, ''33–24–06–800'' should be ''*33–24–05–800*''; and the *citations 33–24–06–01.2.b(9)(a)(4) and .2.b(9)(c)* were omitted;

2. In the entry for Checklist 157, ''33–24–02–01.3.i through fig. 1'' should be ''*33–24–02–01.3.i through .3.l*'';

3. In the entry for Checklist 158, ''33–24–532.6'' should be ''*33–24–05–532.6*'';

4. In the entry for Checklist 167D, ''33–24–02–02.3.d/Chart 1'' should be ''*33–24–02–02/Table 1*''; and

5. In the entry for the Consolidated Checklist addressing Boilers and Industrial Furnaces, ''33–24–05–529.1.a through 529.9'' should be ''*33–24–05–529.1.a through 529.8*''.

III. Incorporation by Reference

A. What is Codification?

Codification is the process of including the statutes and regulations that comprise the State's authorized hazardous waste management program into the CFR. Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs. The State regulations authorized by EPA supplant the federal regulations concerning the same matter with the result that after authorization EPA enforces the authorized regulations. Infrequently, State statutory language which acts to regulate a matter is also authorized by EPA with the consequence that EPA enforces the authorized statutory provision. EPA does not authorize State enforcement authorities and does not authorize State procedural requirements. EPA codifies the authorized State program in 40 CFR part 272 and incorporates by reference State statutes and regulations that make up the approved program which is federally enforceable in accordance with Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934 and 6973, and any other applicable statutory and regulatory provisions.

B. What Decisions Have We Made in This Action?

Today's action codifies EPA's authorization of North Dakota's base hazardous waste management program and its revisions to that program. This codification reflects the State program that will be in effect when EPA's authorized revisions to the North Dakota hazardous waste management program addressed in this final rule become final. Except as discussed above in sections I.G. and II, this action does not reopen any decision EPA previously made concerning the authorization of the State's hazardous waste management program. EPA is not requesting comments on its decisions published in the **Federal Register** notices referenced in section I.F of this document concerning previous revisions to the authorized program in North Dakota.

EPA is incorporating by reference EPA's approval of North Dakota's hazardous waste management program by amending Subpart JJ to 40 CFR part 272. This action amends § 272.1751 and incorporates by reference North Dakota's authorized hazardous waste statutes and regulations. Section

272.1751 also references the demonstration of adequate enforcement authority, including procedural and enforcement provisions, which provide the legal basis for the State's implementation of the hazardous waste management program. In addition, § 272.1751 references the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are evaluated as part of the approval process of the hazardous waste management program under Subtitle C of RCRA.

C. What is the Effect of North Dakota's Codification on Enforcement?

EPA retains the authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013, and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized States. With respect to enforcement actions, EPA will rely on federal sanctions, federal inspection authorities, and federal procedures rather than the State analogs to these provisions. Therefore, the EPA is not incorporating by reference North Dakota's inspection and enforcement authorities nor are those authorities part of North Dakota's approved State program which operates in lieu of the federal program. 40 CFR 272.1751(c)(2) lists these authorities for informational purposes, and also because EPA considered them in determining the adequacy of North Dakota's procedural and enforcement authorities. North Dakota's authority to inspect and enforce the State's hazardous waste management program requirements continues to operate independently under State law.

D. What State Provisions Are Not Part of the Codification?

The public is reminded that some provisions of North Dakota's hazardous waste management program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Unauthorized amendments to authorized State provisions;

(3) New unauthorized State requirements; and

(4) State procedural and enforcement authorities which are necessary to establish the ability of the State's program to enforce compliance but which do not supplant the federal statutory enforcement and procedural authorities.

State provisions that are ''broader-in-scope'' than the federal program are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1751(c)(3) lists the North Dakota statutory and regulatory provisions which are ''broader-in-scope'' than the federal program and which are not part of the authorized program being incorporated by reference. While ''broader-in-scope'' provisions are not part of the authorized program and cannot be enforced by EPA; the State may enforce such provisions under State law.

Additionally, North Dakota's hazardous waste regulations include amendments which have not been authorized by EPA. Since EPA cannot enforce State requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State's authorized hazardous waste program. Regulatory provisions that have not been authorized by EPA include amendments to previously authorized State regulations as well as new State requirements.

In those instances where North Dakota has made unauthorized amendments to previously authorized sections of State code, EPA is identifying in 40 CFR 272.1751(c)(4) any regulations which, while adopted by the State and incorporated by reference, include language not authorized by EPA. Those unauthorized portions of the State regulations are not federally enforceable. Thus, notwithstanding the language in the North Dakota hazardous waste regulations incorporated by reference at 40 CFR 272.1751(c)(1), EPA will only enforce those portions of the State regulations that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at 272.1751(c)(4) (i.e., without the unauthorized amendments) is compiled as a separate document, *Addendum to the EPA Approved North Dakota Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program, July 2006*. This document is available from EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202.

State provisions that are not incorporated by reference in today's rule at 40 CFR 272.1751(c)(1), or that are not listed in 40 CFR 272.1751(c)(2) (''procedural and enforcement''), 40 CFR 272.1751(c)(3) (''broader in scope'') or 40 CFR 272.1751(c)(4) (''unauthorized amendments to authorized State provisions''), are considered new unauthorized State requirements. These requirements are not federally enforceable.

E. What Will be the Effect of Federal HSWA Requirements on the Codification?

With respect to any requirement(s) pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized and which EPA has identified as taking effect immediately in States with authorized hazardous waste management programs, EPA will enforce those federal HSWA standards until the State is authorized for those provisions.

The codification does not affect federal HSWA requirements for which the State is not authorized. EPA has authority to implement HSWA requirements in all States, including States with authorized hazardous waste management programs, until the States become authorized for such requirements or prohibitions, unless EPA has identified the HSWA requirement(s) as an optional or as a less stringent requirement of the federal program. A HSWA requirement or prohibition, unless identified by EPA as optional or as less stringent, supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Some existing State requirements may be similar to the HSWA requirements implemented by EPA. However, until EPA authorizes those State requirements, EPA enforces the HSWA requirements and not the State analogs.

IV. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small

governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

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

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective April 14, 2008.

List of Subjects in 40 CFR Parts 271 and 272

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

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

Dated: January 22, 2008.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under part 271 to the State of North Dakota for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart JJ—[Amended]

■ 2. Subpart JJ is amended by adding § 272.1751 to read as follows:

§ 272.1751 North Dakota State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), North Dakota has final authorization for the following elements as submitted to EPA in North Dakota's base program application for final authorization which was approved by EPA effective on October 19, 1984. Subsequent program revision applications were approved effective on August 24, 1990, July 6, 1992, June 6, 1994, March 20, 2000, November 25, 2005, and April 14, 2008.

(b) The State of North Dakota has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.*

(1) The North Dakota statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the North Dakota statutes that are incorporated by reference from the Matthew Bender & Company Inc., P. O. Box 7587, Charlottesville, VA, 22906–7587, phone number: (800) 833–9844. You may obtain copies of the North Dakota regulations that are incorporated by reference in this paragraph from the North Dakota Legislative Counsel, Second Floor, State Capitol, 600 E Boulevard, Bismarck ND 58505, phone: (701) 328–2916. You may inspect a copy at EPA Region 8, from 7 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, CO, 80202, 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.*

(i) The Binder entitled ''EPA Approved North Dakota Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program'', dated July 2006.

(ii) [Reserved]

(2) EPA considered the following statutes and regulations in evaluating the State program but is not

incorporating them herein for enforcement purposes:

(i) North Dakota Century Code, 1998 Replacement, Volume 13A, North Dakota Constitution, Article XI: Sections 5 and 6.

(ii) North Dakota Century Code, 2002 Replacement, Volume 4A, Chapter 23–01 ''Department of Health'' Section 23–01–04.1, (except (6)).

(iii) North Dakota Century Code, Volume 4A, 2002 Replacement, as amended by the 2005 Pocket Supplement. Chapter 23–20.3 ''Hazardous Waste'': Sections 23–20.3–01, (except (5) and (6)); 23–20.3–02, (except (1), (9), (11), (12), and (17)); 23–20.3–03; 23–20.3–04; 23–20.3–05(3), (5), (6), and (8); 23–20.3–06; 23–20.3–07; 23–20.3–08; 23–20.3–09; and 23–20.3–10.

(iv) North Dakota Century Code, Volume 4A, 2002 Replacement. Chapter 23–29 ''Solid Waste Management'': Section 23–29–04.

(v) North Dakota Century Code, Volume 5, 1991 Replacement. Chapter 28–32 ''Administrative Agencies Practice Act'': Section 28–32–21.1.

(vi) North Dakota Century Code, Volume 6, 1996 Replacement. Chapter 32–40 ''Environmental Law Enforcement'': Sections 32–40–03; 32–40–04; 32–40–05; 32–40–06; 32–40–07; 32–40–08; 32–40–09; 32–40–10; and 32–40–11.

(vii) North Dakota Century Code, Volume 9A, 2001 Replacement, as amended by the 2003 Pocket Supplement. Chapter 44–04 ''Duties, Records, and Meetings'': Sections 44–04–18; 44–04–18.1; 44–04–18.2; 44–04–18.3; 44–04–18.4; 44–04–18.5; 44–04–18.6; 44–04–18.7; 44–04–18.8; 44–04–19; and 44–04–19.1.

(viii) North Dakota Administrative Code (NDAC), Article 33–24, Hazardous Waste Management, as amended through December 1, 2003: sections 33–24–01–15; 33–24–01–16; 33–24–06–05, (except .1.c); 33–24–06–06.2 and .3; 33–24–06–09; 33–24–06–15, (except introductory paragraph through .1.a); 33–24–07–03.4; 33–24–07–04 through 33–24–07–14; and 33–24–07–25 through 33–24–07–27.

(3) The following statutory and regulatory provisions are broader in scope than the federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) North Dakota Century Code, 2002 Replacement, Volume 4A, Chapter 23–01: ''Department of Health'', ''Rulemaking Authority and Procedure'' Section 23–01–04.1(6).

(ii) North Dakota Century Code, Volume 4A, 2002 Replacement, as amended by the 2005 Pocket Supplement. Chapter 23–20.3 ''Hazardous Waste'': Sections 23–20.3–02 (1); 23–20.3–05.1; 23–20.3–05.2; and 23–20.3–05.3.

(iii) North Dakota Administrative Code (NDAC), Article 33–24, ''Hazardous Waste Management'', as amended through December 1, 2003, sections 33–24–04–02.3, 33–24–06–14.3.a(4) and 33–24–06–21.

(iv) North Dakota's hazardous waste regulations set forth additional transporter requirements including permit requirements at 33–24–04–02. The transporter permit requirements are broader in scope than the federal program.

(4) *Unauthorized State Amendments.* (i) The authorized provisions at sections of the NDAC Article 33:24, as amended through December 1, 2003 include amendments that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not federally enforceable. Thus, notwithstanding the language in the North Dakota hazardous waste regulations incorporated by reference at paragraph (c)(1)(i) of this section, EPA will enforce the State regulations that are actually authorized by EPA. The effective dates of the State's authorized provisions are listed in the following table.

NORTH DAKOTA ADMINISTRATIVE CODE (NDAC), ARTICLE 33–24

State citation	Description	Effective date
33–24–02–07.4 introductory paragraph	Residues of Hazardous Waste in Empty Containers	10/1/86
33–24–03–12.2	Accumulation Time	1/1/84
33–24–05–421	Applicability of Definitions	12/1/91
33–24–06–17.2.y(8)	Contents of Permit Application	1/1/84

(ii) The actual State regulatory text authorized by EPA (i.e., without the unauthorized amendments) is available as a separate document, *Addendum to the EPA Approved North Dakota Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program, July 2006.* This document is available from EPA Region 8, from 9 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado 80202.

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 8 and the State of North Dakota, signed by the State of North Dakota State Department of Health on June 6, 2003, and by the EPA Regional Administrator on August 29, 2003, although not incorporated by reference, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement: Hazardous Waste Management Program'' signed by the Attorney General of North Dakota on June 8, 1984, and revisions, supplements, and addenda to that Statement dated February 22, 1989, February 11, 1994, October 13, 1999, April 23, 2004, and August 19, 2004, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

■ 3. Appendix A to part 272 is amended by adding in alphabetical order, ''North Dakota'' and its listing to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

North Dakota

(a) The statutory provisions include: North Dakota Century Code, Volume 4A, 2002 Replacement. Chapter 23–20.3 ''Hazardous Waste'': Sections 23–20.3–05(1), (2), (4), (7), and (9). Copies of the North Dakota statutes that are incorporated by reference are available from the Matthew Bender & Company Inc., P.O. Box 7587, Charlottesville, VA 22906–7587, phone number: (800) 833–9844.

(b) The regulatory provisions include: North Dakota Administrative Code (NDAC), Article 33–24, Hazardous Waste Management, as amended through December 1, 2003.

Please note the following:

For a few regulations, the authorized regulation is an earlier version of the North Dakota State regulation. For these regulations, EPA authorized the version of the regulations that appear in the North Dakota Administrative Code dated July 1, 1997. North Dakota made later changes to these regulations, but these changes have not been authorized by EPA. The regulations where the authorized regulation is an earlier version of the regulation are noted below by inclusion in parentheses of July 1, 1997 after the regulatory citations.

Chapter 33–24–01—General Provisions: Sections 33–24–01–01 through 33–24–01–14.

Chapter 33–24–02—Identification and Listing of Hazardous Waste; 33–24–02–01; 33–24–02–02; 33–24–02–03 except .1.b(3) and (6); 33–24–02–04 through 33–24–02–06; 33–24–02–07; 33–24–02–08 through 33–24–02–19; 33–24–02–22; and Appendices I through V.

Chapter 33–24–03—Standards for Generators: Sections 33–24–03–01; 33–24–03–02; 33–24–03–03.1 and .2; 33–24–03–03.3, (except the phrases ''and a transporter permit'' and ''and applied for a permit''); 33–24–03–03.4; 33–24–03–04 through 33–24–03–12; 33–24–03–13, (except the phrase ''March first of each even-numbered year'' in .2); 33–24–03–14 through 33–24–03–24; 33–24–03–30; 33–24–03–40; and Appendix I.

Chapter 33–24–04—Standards for Transporters: Sections 33–24–04–01, (except .4); 33–24–04–02.1, (except the phrase '', a transporter permit, and a registration certificate''); 33–24–04–02.2, (except the phrases ''and a registration certificate, or a transporter permit,'' and ''and issue a registration certificate''); and 33–24–04–03 through 33–24–04–08.

Chapter 33–24–05—Standards for Treatment, Storage, and Disposal Facilities and for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities: Sections 33–24–05–01; 33–24–05–02, (except the second sentence); 33–24–05–03 through 33–24–05–10; 33–24–05–15 through 33–24–05–20; 33–24–05–26 through 33–24–05–31; 33–24–05–37 through 33–24–05–44; 33–24–05–47 through 33–24–05–50; 33–24–05–51, (except Table 1); 33–24–05–51, Table 1 (July 1, 1997); 33–24–05–52 through 33–24–05–55; 33–24–05–56, (except .11); 33–24–05–57 through 33–24–05–69; 33–24–05–74 through 33–24–05–81; 33–24–05–89 through 33–24–05–93; 33–24–05–94, (except .4.b); 33–24–05–95 through 33–24–05–98; 33–24–05–103 through 33–24–05–115; 33–24–05–118 through 33–24–05–128; 33–24–05–130 through 33–24–05–138; 33–24–05–144 through 33–24–05–151; 33–24–05–160 through 33–24–05–170; 33–24–05–176 through 33–24–05–188; 33–24–05–201 through 33–24–05–204; 33–24–05–230; 33–24–05–235; 33–24–05–250 through 33–24–05–252; 33–24–05–253, (except .3); 33–24–05–256, (except .1.b(2)); 33–24–05–258, (except .4.b(2)); 33–24–05–265; 33–24–05–270 through 33–24–05–279; 33–24–05–280, (except .9); 33–24–05–281; 33–24–05–282, (except .2); 33–24–05–283; 33–24–05–284.8 through .13; 33–24–05–285; 33–24–05–286; 33–24–05–288 through 33–24–05–290; 33–24–05–300 through 33–24–05–303; 33–24–05–400, (except .4); 33–24–05–401 through 33–24–05–406; 33–24–05–420 through 33–24–05–435; 33–24–05–450 through 33–24–05–460; 33–24–05–475 through 33–24–05–477; 33–24–05–501 through 33–24–05–506; 33–24–05–525 through 33–24–05–537; 33–24–05–550 through 33–24–05–553; 33–24–05–554, (except .1.b); 33–24–05–555; 33–24–05–600; 33–24–05–610 through 33–24–05–612; 33–24–05–620 through 33–24–05–624; 33–24–05–630 through 33–24–05–632; 33–24–05–640 through 33–24–05–647; 33–24–05–650 through 33–24–05–667; 33–24–05–670 through 33–24–05–675; 33–24–05–680; 33–24–05–681; 33–24–05–701 through 33–24–05–705; 33–24–05–708 through 33–24–05–720; 33–24–05–730 through 33–24–05–740; 33–24–05–750 through 33–24–05–756; 33–24–05–760 through 33–24–05–762; 33–24–05–770; 33–24–05–780; 33–24–05–781; 33–24–05–800 through 33–24–05–802; 33–24–05–820 through 33–24–05–826; 33–24–05–850; 33–24–05–855 through 33–24–05–857; 33–24–05–860; 33–24–05–865; 33–24–05–866; 33–24–05–870; 33–24–05–875; 33–24–05–880; 33–24–05–885; 33–24–05–890; 33–24–05–895 through 33–24–05–900; 33–24–05–905; 33–24–05–910; 33–24–05–915; 33–24–05–916; and Appendices I through VIII, X through XIII, XVI through XXIV; and XXVI through XXIX.

Chapter 33–24–06—Permits: Sections 33–24–06–01, (except .2.a); 33–24–06–01.2.a (July 1, 1997); 33–24–06–02 through 33–24–06–04; 33–24–06–05.1.c; 33–24–06–06, (except .2 and .3); 33–24–06–07; 33–24–06–08; 33–24–06–10 through 33–24–06–13; 33–24–06–14, (except .3.a(4)); 33–24–06–14, Appendix I; 33–24–06–15 introductory paragraph through .1.a; 33–24–06–16.5 through .7; 33–24–06–17, (except .2.k and .2.z); 33–24–06–18 through 33–24–06–20; 33–24–06–30 through 33–24–06–35; and 33–24–06–100.

Chapter 33–24–07—Permitting Procedures: Sections 33–24–07–01; 33–24–07–02; and 33–24–07–03, (except .4).

Copies of the North Dakota regulations that are incorporated by reference are available from North Dakota Legislative Counsel, Second Floor, State Capitol, 600 E Boulevard, Bismarck, ND 58505, phone number: (701) 328–2916.

* * * * *

[FR Doc. E8–2160 Filed 2–13–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; CC Docket No. 94–102; WC Docket No. 05–196; FCC 07–166]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules in order to require wireless Enhanced 911 (E911) Phase II location accuracy and reliability standards at a geographical level defined by the coverage area of a Public Safety Answering Point (PSAP). The Commission takes this step in order to ensure an appropriate and consistent compliance methodology with respect to location accuracy standards.

DATES: The rules in 47 CFR 20.18(h) contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Carol Simpson, Policy Division, Public Safety and Homeland Security Bureau, (202) 418–2391.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (Order) in PS Docket No. 07–114, CC Docket No. 94–102, WC Docket No. 05–196, FCC 07–166, adopted September 11, 2007, and released November 20, 2007. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. This document may also be obtained from the Commission's duplicating contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by sending an e-mail to *FCC504@fcc.gov* or calling the Consumer and Governmental Affairs Bureau at (202) 418–0530, TTY (202) 418–0432. This document is also available on the Commission's Web site at *http://www.fcc.gov*.

1. On June 1, 2007, we released a *Notice of Proposed Rulemaking* (NPRM) seeking comment on how to improve 911 location accuracy and reliability. We found that although measuring location accuracy at the PSAP level may present challenges, the public interest demands that carriers and technology providers strive to ensure that when wireless callers dial 911, emergency responders are provided location information that enables them to reach the site of the emergency as quickly as possible. In recognition of the fact that

many carriers are not currently measuring and testing location accuracy at the PSAP service area level, we sought comment on whether we should defer enforcement of § 20.18(h) if we adopted our tentative conclusion to require compliance at the PSAP level.

Compliance With § 20.18(h) at the PSAP Level

2. Consistent with the *NPRM*, we find that carriers should be required to meet the Commission's Phase II accuracy requirements set forth in § 20.18(h) at the PSAP service area level. Use of a PSAP-based geographic area for compliance purposes is most consistent with the purpose of the E911 rules, which, as we stated in the *NPRM*, is to ensure that PSAPs receive accurate, meaningful location information in order to dispatch local emergency responders to the correct location. Although § 20.18(h) does not explicitly state that accuracy must be measured and tested at the PSAP level, it is unreasonable to think that the Commission ever envisioned averaging of location accuracy on a large geographic basis, such as a carrier's entire national footprint.

3. As we stated in the *NPRM*, measuring over large geographic areas such as a carrier's entire national footprint could allow a service provider to claim compliance with the Commission's accuracy requirements even though the carrier cannot meet them in individual PSAP areas, or even entire states. In those circumstances, certain PSAPs receive either meaningless location information or no location information. Even worse, PSAPs may receive location information yet not know that the information is not reliable. Any of these results could extend the amount of time necessary for a 911 call taker to obtain the location of the caller or the site of an emergency—including cases as serious as callers attempting to report criminal activity impacting homeland security—and thus result in longer dispatch times, and perhaps even no response by public safety officials who lack sufficient information to locate the caller. In fact, PSAPs often answer calls with: ''911. What is the address of your emergency?'' because they cannot rely on carriers to meet location accuracy requirements in their PSAP service area. A lack of meaningful data regarding a caller's location would thus render the purpose of the rule—which is intended to ensure that carriers provide meaningful location information to emergency responders—a nullity. Measurement of compliance at the PSAP level is the most appropriate way to avoid this otherwise absurd result consistent with the purpose of the rule.

4. The record in this proceeding supports our conclusion that requiring PSAP-level accuracy is necessary to ensure that the goal of providing meaningful location information to emergency responders is met. The public safety organizations that filed comments in response to the *NPRM* are nearly unanimous in their support for our tentative conclusion. These organizations represent a cross-section of the public safety community, ranging from nationwide associations such as APCO and NENA, to first responders in densely populated urban areas such as New York City, Chicago, and Orlando, to emergency response organizations in smaller communities such as Lufkin, Texas and San Juan County, New Mexico. The public safety commenters are uniquely qualified to attest to the importance of accurate and reliable location information. Their comments support our observation in the *NPRM* that averaging location accuracy over large geographic areas is likely to produce inadequate and unreliable location information in some parts of a provider's service area. The New York City Police Department, for example, emphasizes how difficult it is for PSAPs to ensure that the location information they receive from carriers is accurate and reliable. And *Consumer Reports* estimates that accurate location information is not delivered at the PSAP level in nearly half of the country.

5. Some commenters support measuring and testing location accuracy on a statewide basis, rather than at the PSAP service area level. These commenters, however, fail to address how measurement at the state level furthers the goals of § 20.18(h). State-level compliance would not solve the problem that APCO described in its 2004 request for declaratory ruling and that public safety commenters in this proceeding have also identified: State-level compliance would still allow service providers to average accuracy results over a geographic area large enough to render the location information provided to some PSAPs within the state ''virtually useless.'' As a result, carriers may achieve acceptable levels of location accuracy in urban areas of a given state, yet provide location information of limited or no use to first responders in rural areas. Indeed, this approach would particularly shortchange residents of larger states with a significant number of PSAPs as they would be more likely to reside in a PSAP where location information of limited or no use would be provided than would residents of smaller states. Moreover, if it is possible for carriers to comply with location accuracy requirements on a statewide basis in small states, this suggests that it would be feasible for carriers to comply with location accuracy requirements at the PSAP level across the nation were they willing to invest appropriate resources. These commenters also provide no persuasive reasons or evidence why the Commission should require compliance at any level other than the PSAP level. In the absence of any such evidence, we reject this approach.

6. Commenters also argue that we should not require location accuracy compliance at the PSAP level before completing the second phase of this rulemaking, or that we should first convene an industry forum or advisory council to assess the possibilities for improving 911 location accuracy. We reject this argument as without merit. The step we take today is necessary to ensure first responders receive meaningful location accuracy information as soon as possible, and should not be delayed while we explore additional issues regarding improving location accuracy. By making clear that compliance with § 20.18(h) must be measured at the PSAP level, we also effectively ''set the stage'' for the examination that lies ahead, ensuring that all stakeholders are properly discussing location accuracy at the correct geographic level.

7. Our action today, however, does not depend on that examination, nor does it preclude a more comprehensive approach to our E911 location accuracy rules, as some commenters suggest, or otherwise ''plac[e] the cart before the horse.'' Although the *NPRM* sought comment on whether hybrid location technologies can provide even *better* location accuracy results, we do not resolve those questions in the *Order*. We only require service providers to comply with § 20.18(h) at what may be a smaller geographic area than they are currently using to measure their compliance, with whatever location technology they are now using to locate 911 callers. More specifically, we are not mandating any specific location technology or approach in the *Order*, nor are we requiring carriers to implement new location technologies. For example, carriers that currently employ a network-based location solution need not incorporate handset-based location technologies into their networks to comply with our ruling in the *Order*, or vice versa. And, as noted above, our determination here will serve to better inform the discussion going forward. For these

reasons, we are not persuaded that the action we take today is premature.

8. We also reject as without merit commenters' assertions that we should not move forward because the location technologies that are currently available are not capable of satisfying the requirements of § 20.18(h) at the PSAP service area level. In the first instance, our decision to allow carriers five years to achieve compliance at the PSAP level substantially mitigates these concerns. Furthermore, the record indicates that in many cases, PSAP-level compliance is technologically feasible today and would require only the investment of additional financial resources. In this regard, we note that while it is obviously in carriers' financial interests to argue that any meaningful requirement will not be possible to meet, carriers too often blur the distinction between that which is infeasible and that which simply requires the expenditure of additional resources. Finally, even though the record indicates that some service providers are not currently prepared to meet our current location accuracy requirements at the PSAP level, that fact alone should not prevent us from establishing the PSAP service areas as the geographic basis for compliance with the § 20.18(h) location accuracy requirements. Indeed, the Commission has consistently found it appropriate to set aggressive benchmarks for carriers and providers when public safety is at stake, and it is our judgment based on the record as well as our experience regarding the implementation of similar public safety mandates that carriers will be able to meet the compliance deadline and interim benchmarks set forth in the *Order*. While we acknowledge that meeting the deadline and benchmarks may require the investment of significant resources by certain carriers, we believe that such expenditures are more than justified by the accompanying public safety benefits. Furthermore, we believe that the *Order* will have a catalyzing effect on efforts to improve location accuracy measurement because it will create significant incentives for industry.

9. In short, the public interest demands that we no longer allow service providers to nullify our longstanding location accuracy requirements by measuring their compliance over unreasonably large geographic areas. While deployment of E911 Phase II service continues to expand, such service has no significance to local emergency responders if the location information so provided does not permit 911 call takers to locate the caller. In the interests of public safety and homeland security, our action today thus closes any ''loopholes'' that may allow service providers to avoid providing meaningful location accuracy information. It is clear based on the inability to date of wireless carriers and technology vendors to provide meaningful PSAP-level accuracy that it is incumbent on us to clearly establish that compliance must be achieved at the PSAP level.

Compliance Deadline and Interim Benchmarks

10. The record in this proceeding contains encouraging evidence that location technology providers have developed and are developing technologies that can achieve PSAP-level compliance. The record also reflects that the technology exists to test, monitor, and report compliance at the PSAP level. Moreover, as noted above, PSAP-level compliance is possible in many instances through the deployment of existing resources and technologies presently available to carriers. We recognize, however, that many service providers are not currently measuring and testing location accuracy at the PSAP level, and that meeting our location accuracy requirements in every PSAP may take time to achieve. We do not intend to penalize carriers that are making good faith efforts to comply with our location accuracy requirements at the PSAP level. At the same time, we must ensure that carriers begin to transition to PSAP-level compliance without delay.

11. Accordingly, we establish a deadline of September 11, 2012 for achieving compliance with § 20.18(h) at the PSAP level. We find that allowing sufficient time for carriers to achieve compliance alleviates parties' concerns about the challenges of PSAP-level compliance with § 20.18(h), yet still leads to appreciable and swift improvements to E911 service that will result from compliance at the appropriate geographic level. The record in this proceeding supports giving carriers five years to achieve PSAP-level compliance.

12. In order to ensure that carriers are making progress toward compliance with the Commission's location accuracy requirements at the PSAP level, we establish a series of interim requirements, which carriers must also meet in order to comply with § 20.18(h). These benchmarks consist of the following:

- By September 11, 2008—one year from the date of adoption of the *Order*—each carrier subject to the rule must satisfy the location accuracy requirements of § 20.18(h) within each Economic Area (EA) in which that carrier operates.
- By September 11, 2009—two years from the date of adoption of this *Order*—each carrier subject to the rule must file with the Commission a report describing the status of its ongoing efforts to comply with § 20.18(h).
- By September 11, 2010—three years from the date of adoption of the *Order*—each carrier subject to the rule must (1) satisfy the location accuracy requirements of § 20.18(h) within each Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) in which that carrier operates; (2) demonstrate PSAP-level compliance with § 20.18(h) within at least 75% of the PSAPs the carrier serves; and (3) demonstrate accuracy in all PSAP service areas within at least 50% of the applicable location accuracy standard (in other words, a carrier subject to the accuracy standard for handset-based technologies in § 20.18(h)(2), which is 50 meters for 67 percent of calls, must achieve location accuracy of 75 meters for 67 percent of calls in all PSAPs in order to comply with this requirement).
- By September 11, 2011—four years from the date of adoption of the *Order*—each carrier subject to the rule must file with the Commission a report describing the status of its ongoing efforts to comply with § 20.18(h).
- By September 11, 2012—five years from the date of adoption of the *Order*—each carrier subject to the rule must be in full compliance with § 20.18(h) at the PSAP service area level.

In determining their compliance with these benchmarks and preparing their reports to the Commission, carriers must include only those PSAPs that are capable of receiving Phase II location data.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

13. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

B. Congressional Review Act

14. The Commission will send a copy of this Second Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (''CRA''), *see* 5 U.S.C. 801(a)(1)(A).

II. Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *NPRM* in PS Docket No. 07–114; CC Docket No. 94–102; and WC Docket No. 05–196. The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

16. In the NPRM, we sought comment on how to best ensure that public safety answering points (PSAPs) receive location information that is as accurate as possible for all wireless E911 calls. The objective was to ensure that PSAPs receive reliable and accurate location information irrespective of the location of the caller or the technology that may be used.

17. The *Report and Order* requires that Commercial Mobile Radio Service (CMRS) carriers comply by September 11, 2012, with § 20.18(h) of the Commission's rules at the PSAP service area level and adopts interim benchmarks in each of the preceding years to achieve this level. Section 20.18(h) sets forth the standards for Phase II wireless E911 location accuracy and reliability. This action responds to a petition for declaratory ruling filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO) expressing concern that by measuring and testing location accuracy over geographic areas larger than PSAP service areas, a wireless carrier can assert that it satisfies the requirements of § 20.18(h) even when it is not meeting the location accuracy requirements in substantial segments of its service area.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

18. There were no comments filed that specifically addressed the IRFA.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

Telecommunications Service Entities

Wireless Telecommunications Service Providers

20. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

21. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard.

22. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. In the Paging *Third Report and Order,* we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 370 are small, under the SBA-approved small business size standard.

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 445 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 245 of these are small under the SBA small business size standard.

24. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business''

was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

25. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

26. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

27. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

28. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

Wireline Carriers and Service Providers

29. The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2002 show that there were 2,432 firms in this category that operated for the entire year. Of this total, 2,395 firms had employment of 999 or fewer employees, and 37 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

30. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

31. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

32. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business

size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

33. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

34. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

35. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 613 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 609 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

36. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

37. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

38. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

39. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (''toll free'') subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

International Service Providers

40. The Commission has not developed a small business size standard specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.

41. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year. Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the

majority of Satellite Telecommunications firms are small entities that might be affected by our action.

42. The second category of Other Telecommunications ''comprises establishments primarily engaged in (1) providing specialized telecommunications applications, such as satellite tracking, communications telemetry, and radar station operations; or (2) providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year. Of this total, 303 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

Cable and OVS Operators

43. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small.

44. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

45. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. *Open Video Services (OVS).* In 1996, Congress established the open video system (OVS) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (LECs). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard of Cable and Other Program Distribution Services, which consists of such entities having $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications or local OVS franchises. As of June, 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (RCN), which serves about 371,000 subscribers as of June, 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

Internet Service Providers

47. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $23 million or less. According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year. Of these, 2,437 firms had annual receipts of under $10 million, and 47 firms had receipts of $10 million or more but less then $25 million. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

48. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The SBA has developed a small business size standard for this category; that size standard is $6.5 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under $5 million, and an additional nine firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

Equipment Manufacturers

49. *Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has

developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

50. *Telephone Apparatus Manufacturing*. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

51. *Semiconductor and Related Device Manufacturing*. These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,082 establishments in this category that operated for the entire year. Of these, 987 had employment of under 500, and 52 establishments had employment of 500 to 999.

52. *Computer Storage Device Manufacturing*. These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 209 establishments in this category that operated for the entire year. Of these, 197 had employment of under 500, and eight establishments had employment of 500 to 999.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

53. In this *Report and Order*, we have taken steps to advance our public safety mission by establishing a requirement that CMRS carriers comply by September 11, 2012, at the PSAP service area level, with § 20.18(h) of the Commission's rules. The Order requires carriers to submit compliance reports to the Commission at the two-year and four-year marks, explaining their progress in achieving compliance with § 20.18(h) at the PSAP level. In addition, some carriers may have to revise their internal recordkeeping procedures to comply with the Order's requirements, although the Order imposes no specific requirements in this regard.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. The RFA requires an agency to describe any significant, specifically small business 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) and exemption from coverage of the rule, or any part thereof, for small entities.''

55. In the *Notice*, the Commission specifically considered the impact of potential revisions to the wireless E911 accuracy rules on small entities. The *Notice* asked whether certain classes of carriers and/or rural networks should be held to a uniform standard of accuracy if the Commission were to adopt one, and if so, by what date they should be required to come into compliance with a more stringent, uniform accuracy requirement. In previous rulemakings, the Commission has established different compliance deadlines for small wireless carriers. The questions posed in the *Notice* enabled the Commission to assess whether similar concessions to small entities were warranted with respect to wireless E911 accuracy requirements.

56. The Commission has determined that the benefits of requiring all CMRS carriers to comply with the requirements of § 20.18(h) at the PSAP service area level far outweigh any burdens associated with implementing these requirements. E–911 represents a significant and valuable investment that enables emergency responders to reach the site of an emergency as quickly as possible. The public safety comments in response to the *Notice* were nearly unanimous in support of this requirement. We acknowledge that compliance with the rule adopted in the order may impose cost burdens on small entities. However, given the great public interest benefits of the rules, we find that the public interest benefits outweigh the economic burdens. Furthermore, the Order gives carriers a full five years to come into compliance with § 20.18(h) at the PSAP level, in large part because we have taken into account the specific economic and technological concerns that small entities face. In the Initial Regulatory Flexibility Analysis, we sought comment on these rules and no commenter proposed an alternative version that would serve these benefits while lessening the economic burdens. Accordingly, we find that we have discharged our duty to consider the burdens imposed on small entities.

Report to Congress

57. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Second Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

III. Ordering Clauses

58. Accordingly, *it is ordered*, pursuant to sections 1, 4(i), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 332, that the Report and Order in PS Docket No. 07–114, CC Docket No. 94–102, and WC Docket No. 05–196 is adopted, and that part 20 of the Commission's rules, 47 CFR part 20, is amended. The Order shall become effective April 14, 2008, subject to OMB approval for new information collection requirements.

59. *It is further ordered* that the Request for Declaratory Ruling filed by APCO is granted to the extent indicated herein.

60. *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.

List of Subjects in 47 CFR Part 20

Communications equipment, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 20 to read as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 2. Section 20.18 paragraph (h) is revised to read as follows:

§ 20.18 911 Services.

* * * * *

(h) *Phase II accuracy.* (1) By September 11, 2012, licensees subject to this section shall comply with the following standards for Phase II location accuracy and reliability, to be tested and measured at the PSAP service area geographic level:

(i) For network-based technologies: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls;

(ii) For handset-based technologies: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls.

(iii) For the remaining 5 percent of calls, location attempts must be made and a location estimate must be provided to the appropriate PSAP.

(2) By the dates specified in this paragraph, carriers must satisfy the following requirements:

(i) By September 11, 2008, carriers must satisfy the location accuracy standards in paragraph (h)(1) of this section within each Economic Area (EA) in which that carrier operates;

(ii) By September 11, 2009, carriers must file with the Commission a report describing the status of their ongoing efforts to comply with § 20.18(h);

(iii) By September 11, 2010, carriers must:

(A) Satisfy the location accuracy standards in paragraph (h)(1) of this section within each Metropolitan Statistical Area (MSA) and Rural Service Area (RSA) in which that carrier operates;

(B) Demonstrate PSAP-level compliance with the location accuracy standards in paragraph (h)(1) of this section within at least 75% of the PSAPs the carrier serves; and

(C) Demonstrate accuracy in all PSAP service areas within at least 50% of the applicable location accuracy standard (*i.e.*, a carrier subject to the location accuracy standards in paragraph (h)(1)(ii) of this section must achieve location accuracy of 75 meters for 67 percent of calls in all PSAPs).

(iv) By September 11, 2011, carriers must file with the Commission a report describing the status of their ongoing efforts to comply with § 20.18(h).

(v) By September 11, 2012, carriers must be in full compliance with § 20.18(h) at the PSAP service area level.

(3) In assessing their compliance with the requirements of this section, carriers must include only those PSAPs that are capable of receiving Phase II location data.

* * * * *

[FR Doc. E8–2797 Filed 2–13–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 080208139–8152–01]

RIN 0648–XF58

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the Atlantic Large Whale Take Reduction Plan's (ALWTRP) implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 2,708 nm^2 (9,288 km^2) in February and 2,648 nm^2 (9,082 km^2) in March, southeast of Portland, Maine, for 15 days. The purpose of this action is to provide protection to an aggregation of northern right whales (right whales).

DATES: Effective beginning at 0001 hours February 19, 2008, through 2400 hours March 3, 2008.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9300 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) due to incidental interaction with commercial fishing activities. In addition, the measures identified in the ALWTRP would provide conservation benefits to a fourth species (minke), which are neither listed as endangered nor threatened under the Endangered Species Act (ESA). The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right

whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (257 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (3.43 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On February 4, 2008, an aerial survey reported an aggregation of eighteen right whales in the proximity of 42° 42′ N latitude and 69° 02′ W. long. The position lies approximately 75 nm southeast of Portland, Maine. After conducting an investigation, NMFS ascertained that the report came from a qualified individual and determined that the report was reliable. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. In February, the DAM Zone is bound by the following coordinates:

43° 10′ N., 69° 33′ W. (NW Corner)
43° 10′ N., 68° 26′ W.
42° 15′ N., 68° 26′ W.
42° 15′ N., 69° 33′ W.
43° 10′ N., 69° 33′ W. (NW Corner)

In March, the DAM zone overlaps SAM West, and is bounded by the following coordinates:

43° 10′ N., 69° 33′ W. (NW Corner)
43° 10′ N., 68° 26′ W.
42° 15′ N., 68° 26′ W.
42° 15′ N., 69° 24′ W.
42° 30′ N., 69° 24′ W.
42° 30′ N., 69° 33′ W.
43° 10′ N., 69° 33′ W. (NW Corner)

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: a portion of this DAM zone overlaps the Northeast Multispecies year-round Cashes Ledge Closure Area found at 50 CFR 648.81(d), the February Cashes Ledge Closure Area for Harbor Porpoise found at 50 CFR 229.33(a)(6), and the March Northeast Multispecies seasonal Gulf of Maine Rolling Closure Area I found at 50 CFR 648.81(f)(i). Due to these closures, sink gillnet gear is prohibited from these portions of the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within portions of Northern Nearshore Lobster Waters that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portions of the Other Northeast Gillnet Waters Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. The breaking strength of each net panel weak link must not exceed 1,100 lb (498.8 kg). The weak link requirements apply to all variations in net panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or, one weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string;
5. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 19, 2008, through 2400 hours March 3, 2008, unless terminated sooner or

extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon issuance of the rule by the AA.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 8, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 08–683 Filed 2–11–08; 1:49 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 73, No. 31

Thursday, February 14, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0038; Airspace Docket No. 07–ANM–16]

Proposed Establishment of Low Altitude Area Navigation Routes (T-Routes); Southwest Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a low altitude Area Navigation (RNAV) route, designated T–274 in the State of Oregon. T-routes are low altitude Air Traffic Service (ATS) routes, based on RNAV, for use by aircraft having instrument flight rules (IFR)-approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. The FAA is proposing this action to enhance safety and improve the efficient use of the navigable airspace in the State of Oregon.

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

ADDRESSES: Send comments on this proposal to the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2008–0038 and Airspace Docket No. 07–ANM–16 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–0038 and Airspace Docket No. 07–ANM–16) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–0038 and Airspace Docket No. 07–ANM–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, 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 Western Service Center, Air Traffic Organization, Federal Aviation Administration, 1601 Lind Avenue, 15000 SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Low Altitude RNAV Route Identification and Charting

Low altitude RNAV routes are identified by the letter ''T'' prefix followed by a three digit number. The ''T'' prefix is one of several International Civil Aviation Organization designators used to identify domestic RNAV routes. The FAA has been allocated the letter ''T'' prefix and the number block 200 to 500 for use in naming these routes. The FAA uses the ''T'' prefix for RNAV routes in the low altitude en route structure of the National Airspace System.

T-routes are depicted in blue on the appropriate IFR en route low altitude chart(s).

Each route depiction includes a GNSS minimum en route altitude to ensure obstacle clearance and communications reception.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish a low altitude RNAV route in Southwest Oregon. The route would be designated T–274, and would be depicted on the appropriate IFR En Route Low Altitude charts. T-routes are low altitude RNAV ATS routes, similar to Very High Frequency Omni directional Range Federal airways, but based on GNSS navigation. RNAV-equipped aircraft capable of filing flight plan equipment suffix ''G'' may file for these routes.

The T-route described in this notice is being proposed to enhance safety, and to facilitate the more flexible and efficient use of the navigable airspace for en route IFR operations transitioning through mountainous terrain of Southwest Oregon.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9R signed August 15, 2007 and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed 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 the 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 RNAV T-Routes in Southwest Oregon.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' paragraph 311a, 311b, and 311k. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; 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 FAA Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007 and effective September 15, 2007, is amended as follows:

Paragraph 6011 Contiguous United States Area Navigation Routes

* * * * *

T–274 Newport, OR (OPN) to CRAAF [New]

Newport, OR (ONP) VORTAC
(Lat. 44°34′31″ N., long. 124°03′38″ W.)
CRAAF Fix
(Lat. 44°45′37″ N., long. 123°21′06″ W.)

* * * * *

Issued in Washington, DC, on February 7, 2008.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–2759 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–13–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of the United States Trade Representative

15 CFR Part 2004

Freedom of Information Act

AGENCY: Office of the United States Trade Representative, Executive Office of the President.

ACTION: Proposed rule.

SUMMARY: The Office of the United States Trade Representative (USTR) is issuing a proposed rule to update its Freedom of Information Act regulations. USTR's last made changes to its FOIA regulations in 1975. Since that time the information relating to USTR has changed and there have been several changes to the Freedom of Information Act, which needed to be reflected in the regulations.

DATES: Public comments on this proposed rule are invited and must be received on or before Wednesday, April 14, 2008.

ADDRESSES: Comments should be submitted electronically to Gloria Blue at *FR0804@ustr.eop.gov* and should contain in the subject-line ''Attn: Freedom of Information Act Rules''.

FOR FURTHER INFORMATION CONTACT: David Apol, USTR, telephone (202) 395–9633, Fax (202) 395–3640.

SUPPLEMENTARY INFORMATION: USTR last made changes to its FOIA regulations in 1975. 40 FR 30934, July 24, 1975. The current regulations are published at 15 CFR part 2004 and are available on USTR's Web site at *http://www.ustr.gov*.

Since that time, pertinent information relating to USTR has changed and USTR has made changes in the way it implements the FOIA. In addition, Executive Order 13392 mandated changes in federal agency FOIA practices to ensure prompt and effective response to the public's requests for information. 70 FR 75373, Dec. 19, 2005. Finally, Public Law 110–175, the OPEN Government Act of 2007, amended the definition of ''representative of the news media'' and made other changes to the Freedom of Information Act.

In response to Executive Order 13392, USTR created a FOIA plan requiring it to revise its FOIA regulations and to improve the efficiency of information disclosure under the FOIA. The proposed rule will update USTR's FOIA regulations to provide current information about USTR and will more accurately reflect its FOIA practices. Further, the proposed rule will also bring USTR's fee structure into conformity with the Office of Management and Budget's (OMB's) Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987. The proposed rule also incorporates changes made by the OPEN Government Act of 2007.

Executive Order 12866

The United States Trade Representative certifies that the proposed rule is not significant for purposes of Executive Order 12866, 58 FR 51735, Oct. 4, 1993. Therefore, OMB has not reviewed the proposed rule under that Executive Order.

Regulatory Flexibility Act

The United States Trade Representative certifies that this proposed rule is not subject to the

Regulatory Flexibility Act, 5 U.S.C. 601, because it will not have a significant economic impact on a substantial number of small entities. For this reason, USTR has not prepared a Regulatory Flexibility Statement and Analysis.

Paperwork Reduction Act

The United States Trade Representative certifies that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because the proposed rule does not seek to collect information. Therefore, it does not require OMB approval.

For the reasons stated in the preamble, USTR proposes to revise 15 CFR Part 2004 as follows:

PART 2004—FREEDOM OF INFORMATION POLICIES AND PROCEDURES

Organization

Sec.
2004.1 In general.
2004.2 Authority and functions.
2004.3 Organization.

Procedures

2004.4 Availability of records.
2004.5 Accessing records without request.
2004.6 Requesting records.

Costs

2004.7 Definitions.
2004.8 Fees in general.
2004.9 Fees for categories of requesters.
2004.10 Other charges.
2004.11 Payment and waiver.

Authority: 5 U.S.C. 552; Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012, Mar. 27, 1987.

Organization

§ 2004.1 In general.

This information is furnished for the guidance of the public and in compliance with the requirements of the Freedom of Information Act, 5 U.S.C. 552, as amended (FOIA). This regulation should be read in conjunction with the FOIA.

§ 2004.2 Authority and functions.

The Office of the United States Trade Representative (USTR) negotiates directly with foreign governments to conclude trade agreements, resolve trade disputes, and participate in global trade policy organizations. USTR consults with governments, business groups, legislators, and public interest groups to obtain their views on trade issues and explain the President's trade policy positions. The general functions of USTR, as provided by statute, are to develop and coordinate international trade and direct investment policy, advise and assist the President, represent the United States in international trade negotiations, and provide policy guidance to federal agencies on international trade matters. The United States Trade Representative, a cabinet officer, serves as a Vice Chairman of the Overseas Private Investment Corporation, a Board member of the Millennium Challenge Corporation, a non-voting member of the Export-Import Bank, and a member of the National Advisory Council on International Monetary and Financial Policies.

§ 2004.3 Organization.

USTR's main office is located in Washington, DC. It also maintains a mission in Geneva, Switzerland.

Procedures

§ 2004.4 Availability of records.

USTR's publicly accessible records are available through USTR's public reading room or its Web site. USTR also provides records to individual requesters in response to FOIA requests. USTR generally withholds predecisional, deliberative documents and classified trade negotiating and policy documents under 5 U.S.C. 552(b).

§ 2004.5 Accessing records without request.

(a) *Public reading room.* USTR maintains and makes available for public inspection and copying USTR records pertaining to matters within the scope of 5 U.S.C. 552(a)(2), as amended. Most records in USTR's public reading room comprise responses to **Federal Register** notices that USTR has issued. USTR's public reading room is located at 1724 F Street, NW., Washington, DC. Access to the reading room is by appointment only. Contact USTR's FOIA Officer at (202) 395–6186 to set up an appointment.

(b) *Electronic resources.* Certain USTR records, including press releases and other public issuances, are available electronically from USTR's homepage at *http://www.ustr.gov*. USTR encourages requesters to visit its Web site before making a request for records under § 2004.6.

§ 2004.6 Requesting records.

(a) *Written requests required.* For records not available as described under § 2004.5, requesters wishing to obtain information from USTR must submit a written request to USTR's FOIA Officer. Requests should be addressed to FOIA Officer, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508. As there may be delays in mail delivery, it is advisable to send request via facsimile to (202) 395–9458.

(b) *Contents of requests.* Requests shall be as specific as possible and shall reasonably describe the records sought so that the records can be located with a reasonable amount of effort. The request should identify the desired record or reasonably describe it and should include information such as the date, title or name, author, recipient, and subject matter of the record.

(c) *Response to requests—(1) Processing.* The FOIA Officer shall ordinarily determine within 20 days (except Saturdays, Sundays, and federal holidays) after receiving a request for records, whether it is appropriate to grant or deny the request. The 20-day period may be tolled one time if the FOIA Officer requests information from the requestor or if additional time is necessary to clarify issues with the requestor regarding a fee assessment.

(i) *Request granted.* If the FOIA Officer decides to grant the request, the FOIA Officer shall promptly provide the requester written notice of the decision. The FOIA Officer shall normally include with the notice both the requested records and a copy of the decision.

(ii) *Request denied.* If the FOIA Officer denies the request, in full or part, the FOIA Officer shall provide the requester written notice of the denial together with the approximate number of pages of information withheld and the exemption under which the information was withheld. The notice shall also describe the procedure for filing an appeal.

(2)(i) *Expedited processing.* At the time a requester submits an initial request for records the requester may ask the FOIA Officer in writing to expedite processing of the request. The request for expedited processing must be accompanied by a written statement, true and correct to the best of the requester's knowledge and belief, explaining why expedited processing is warranted. The FOIA Officer shall generally grant requests for expedited processing of requests for records, and appeals of denials under paragraph (d)(2) of this section, whenever the FOIA Officer determines that:

(A) Failure to obtain the requested records on an expedited basis could reasonably pose an imminent threat to a person's life or physical safety; or

(B) With respect to a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public about government activity that is the specific subject of the FOIA request.

(ii) The FOIA Officer shall ordinarily decide within ten days after receiving a request for expedited processing whether to grant it and shall notify the requester of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall process the request as soon as practicable. If the FOIA Officer denies a request for expedited processing, USTR shall act expeditiously on any appeal of the denial.

(3) *Extension for unusual circumstances*—(i) *In general*. If the FOIA Officer determines that unusual circumstances exist, the FOIA Officer may extend for no more than ten days (except Saturdays, Sundays, and federal holidays) the time limits described in paragraph (1) of this section by providing written notice of the extension to the requester. The FOIA Officer shall include with the notice a brief statement of the reason for the extension and the date the FOIA Officer expects to make the determination.

(ii) *Additional procedures*. The FOIA Officer shall provide written notice to the requester if the FOIA Officer decides that the determination cannot be made within the time limit described in subparagraph (i). The notice shall afford the requester an opportunity to limit the scope of the request to the extent necessary for the FOIA Officer to process it within that time limit or an opportunity to arrange a longer period for processing the request.

(d) *Appeals*—(1) *Initiating appeals*. Requesters not satisfied with the FOIA Officer's written decision may request USTR's FOIA Appeals Committee to review the decision. Appeals must be delivered in writing within 60 days of the date of the decision and shall be addressed to the FOIA Appeals Committee, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. As there may be delays in mail delivery, it is advisable to FAX appeals to (202) 395–9458. An appeal shall include a statement specifying the records that are the subject of the appeal and explaining why the Committee should sustain the appeal.

(2) *Appeal decisions*. The Committee shall ordinarily decide the appeal within 20 working days from the date it receives the appeal. If the Committee denies the appeal in full or part, the Committee shall promptly notify the requester in writing of the Committee's decision and the provisions for judicial review. If the Committee sustains the appeal, the FOIA Officer shall notify the requester in writing and shall make available to the requester copies of the releasable records once the requester pays any fees that USTR assesses under §§ 2004.8 through 2004.10.

Costs

§ 2004.7 Definitions.

For purposes of these regulations:

(a) ''Commercial use request'' means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

(b) ''Direct costs'' means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

(c) ''Duplicate'' means to copy records to respond to a FOIA request. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

(d) ''Educational institution'' means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

(e) ''Non-commercial scientific institution'' means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(f) ''Representative of the news media'' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

(g) ''Review'' means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

(h) ''Search for'' means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 2004.8 Fees in general.

USTR shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. USTR may assess charges for time spent searching for records even if USTR fails to locate the records or if the records are located and determined to be exempt from disclosure. In general, USTR shall apply the following fee schedule, subject to §§ 2004.9 through 2004.11:

(a) *Manual searches*. Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches*. Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews*. Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the initial review of records located in response to commercial use requests.

(d) *Duplication*. Fees for copying paper records or for printing electronic records shall be assessed at a rate of $.15 per page. For other types of copies such as disks or audio visual tapes, USTR shall charge the direct cost of producing the document(s). If duplication charges are expected to exceed $25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 2004.6(c)(1) shall be deemed to begin when the FOIA Officer receives the request.

(e) *Advance payments required*. The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(1) The FOIA Officer estimates that the fee will exceed $250; or

(2) The requester has previously failed to pay a fee in a timely fashion.

When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 2004.6(c)(1) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee*. USTR shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) After December 31, 2008, USTR fails to comply with any time limit under the Freedom of Information Act for responding to a request for records where no unusual or exceptional circumstances apply.

§ 2004.9 Fees for categories of requesters.

USTR shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, USTR shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational institutions.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* USTR shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* USTR shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 2004.10 Other charges.

USTR may apply other charges, including the following:

(a) *Special charges.* USTR shall recover the full cost of providing special services, such as sending records by express mail, to the extent that USTR elects to provide them.

(b) *Interest charges.* USTR may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 2004.11 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requester of the applicable fees, the Officer shall inform the requester of where to send the payment.

(b) *Waiver.* USTR may waive all or part of any fee provided for in §§ 2004.8 through 2004.9 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

Dated: January 31, 2008.

Ambassador Susan C. Schwab,

United States Trade Representative.

[FR Doc. E8–2254 Filed 2–13–08; 8:45 am]

BILLING CODE 3190–W8–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 702

[REG–149475–07]

RIN 1545–BH36

Payments From the Presidential Primary Matching Payment Account

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under Part 702, Presidential Primary Matching Payment Account, of title 26 of the CFR, relating to the financing of presidential primary campaigns. The temporary regulations amend Treasury procedures for making payments from the Presidential Primary Matching Payment Account (Primary Account) to eligible primary candidates. The text of those regulations also serves as the text for these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by May 14, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149475–07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–149475–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–149475–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Karla M. Meola, (202) 622–4930 (not a toll-free number); concerning the submission of comments and/or to request a public hearing, Oluwafunmilayo Taylor of the Publications and Regulation Branch at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 702 relating to section 9037 of the Internal Revenue Code (Code). The temporary regulations authorize the Treasury Department to devise procedures that ensure payments from the Primary Account are made promptly to eligible primary candidates. The text of the temporary regulations also serves as the text for these proposed regulations. The preamble to the temporary regulations explains the amendment.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the

Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Karla M. Meola, Office of the Associate Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 702

Campaign Funds.

Proposed Amendments to the Regulations.

Accordingly, 26 CFR part 702 is proposed to be amended as follows:

PART 702—PRESIDENTIAL PRIMARY MATCHING PAYMENT ACCOUNT

Paragraph 1. The authority citation for part 702 continues to read in part as follows:

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

Par. 2. Section 702.9037–1 is revised to read as follows:

§ 702.9037–1 Transfer of amounts to the Presidential Primary Matching Payment Account.

[The text of the proposed § 702.9037–1 is the same as the text of § 702.9037–1T(a) through (b)(1) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 702.9037–2 is revised to read as follows:

§ 702.9037–2 Payments from the Presidential Primary Matching Payment Account.

[The text of proposed § 702.9037–2 is the same as the text of § 702.9037–2T(a) through (c)(1) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 08–675 Filed 2–11–08; 12:09 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2007–0198]

RIN 1625–AA01

Anchorage Regulations; Stonington, ME, Deer Island Thorofare, Penobscot Bay, ME

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish Crotch Island Special Anchorage in Stonington, Maine, on Deer Island Thorofare, Penobscot Bay. This action is necessary to facilitate safe navigation in that area and to provide safe and secure anchorage for vessels of not more than 65 feet. This proposal is intended to increase the safety for life and property on Deer Island Thorofare, improve the safety of anchored vessels, create workable boundaries for future mooring expansion, and provide for the overall safe and efficient flow of recreational vessels and commerce.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2008.

ADDRESSES: You may mail comments and related material to Commander (dpw) (USCG–2007–0198), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, who maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2007–0198), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed rule is the result of collaboration with the Town of Stonington's Harbor Committee and Town Council to accommodate vessels mooring in the area. The proposed rule would establish Crotch Island Special Anchorage area organized from the current accommodations of approximately 500 moorings. The proposed rule is designed to aid the Town of Stonington in enforcing its mooring and boating regulations by clearly defining the available mooring fields. In addition, the proposed rule will ensure that there are transient anchorage areas available, and extend the convenience of a special anchorage to local vessel owners. The areas under consideration are currently established mooring areas.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Road, Concord, MA 01742.

Discussion of Proposed Rule

The proposed rule would create Crotch Island Special Anchorage area located at the town of Stonington,

Maine, on Deer Island Thorofare, Penobscot Bay.

All waters enclosed by a line beginning at a point on the northeast shore of Crotch Island located at latitude 44°08′51.0″ N, longitude 068°40′06.0″ W; thence southerly along the shoreline to latitude 44°08′36.0″ N, longitude 068°40′07.02″ W; thence to latitude 44°08′36.0″ N, longitude 068°40′04.02″ W; thence to latitude 44°08′46.98″ N, longitude 068°40′00.0″ W; thence to latitude 44°08′55.02″ N, longitude 068°39′49.02″ W; thence to latitude 44°08′54.0″ N, longitude 068°40′06.0″ W thence back to origin.

All proposed coordinates are North American Datum 1983 (NAD 83).

This special anchorage area would be limited to vessels no greater than 65 feet in length. Vessels not more than 65 feet in length are not required to sound signals as required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) nor exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C 2030) when at anchor in a special anchorage area. Mariners utilizing this anchorage area are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this proposal conforms to the changing needs of the Town of Stonington, the changing needs of recreational, fishing and commercial vessels, and to make the best use of the available navigable water. The proposed special anchorage area does not impede the passage of recreational or commercial vessels as they are not located in the primary entrance channel to Stonington Harbor. The proposed special anchorage area is a consolidation and delineation of existing mooring fields. Thus, this special anchorage area will have a minimal economic impact. This proposed rule is in the interest of safe navigation, protection of the vessels moored at the Town of Stonington, and protection of the marine environment.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational or commercial vessels intending to transit in a portion of the Deer Island Thorofare in and around this special anchorage area. However, this special anchorage area would not have a significant economic impact on these entities for the following reasons: The proposed special anchorage area is not located near the primary entrance into Stonington Harbor nor will it impede safe and efficient vessel transit in the area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil*.

The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal

Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it would establish a special anchorage area.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review and documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.4 by adding paragraph (e) to read as follows:

§ 110.4 Penobscot Bay, Maine.

* * * * *

(e) *Stonington Harbor, Deer Island Thorofare*—(1) *Crotch Island.* All of the waters enclosed by a line beginning at the northeast shore of Crotch Island located at: latitude 44°08′51.0″ N, longitude 068°40′06.0″ W; thence southerly along the shoreline to latitude 44°08′36.0″ N, longitude 068°40′07.02″ W; thence to latitude 44°08′36.0″ N, longitude 068°40′04.02″ W; thence to latitude 44°08′46.98″ N, longitude 068°40′00.0″ W; thence to latitude 44°08′55.02″ N, longitude 068°39′49.02″ W; thence to latitude 44°08′54.0″ N, longitude 068°40′06.0″ W thence back to origin.

DATUM: NAD 83.

(2) [Reserved]

Note to § 110.4(e): An ordinance of the Town of Stonington, Maine requires the approval of the Stonington Harbor Master for the location and type of moorings placed in these special anchorage areas. All anchoring in the areas are under the supervision of the Stonington Harbor Master or other such authority as may be designated by the authorities of the Town of Stonington, Maine. All moorings are to be so placed that no moored vessel will extend beyond the limit of the area.

Dated: January 17, 2008.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E8–2693 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2007–0199]

RIN 1625–AA01

Anchorage Regulations; Boston Harbor, MA, Weymouth Fore River

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish Gull Point(PT) Special Anchorage area in the Weymouth Fore River, Weymouth, Massachusetts. This proposed action is necessary to facilitate safe navigation and provide a safe and secure anchorage for vessels of not more than 65 feet in length. This action is intended to increase the safety of life and property in the Weymouth Fore River, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: Comments and related material must reach the Coast Guard on or before April 14, 2008.

ADDRESSES: You may mail comments and related material to Commander (dpw) (USCG–2007–0199), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, or deliver them to room 628 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2007–0199), indicate the specific section of this document to which each comment applies, and give the reason for each

comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The rule is intended to reduce the risk of vessel collisions by decreasing activity in nearby over-crowded mooring areas or anchorages in Weymouth, Massachusetts. The proposed rule would establish Gull Point(PT) Special Anchorage, to allow anchorage for approximately 40 vessels. When at anchor in any special anchorage, vessels not more than 65 feet in length need not carry or exhibit the white anchor lights required by the Navigation Rules.

In developing this proposed rule, the Coast Guard has consulted with the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Discussion of Proposed Rule

The proposed rule would establish Gull Point (PT) Special Anchorage located in the Weymouth Fore River, Weymouth, Massachusetts. The special anchorage for the Weymouth Fore River is enclosed by a line beginning at latitude 42°15′05″ N, longitude 70°57′26″ W; thence to latitude 42°15′00″ N, longitude 70°57′26″ W; thence to latitude 42°15′15″ N, longitude 70°56′50″ W; thence to latitude 42°15′18″ N, longitude 70°56′50″ W; thence to the point of the beginning. All proposed coordinates are North American Datum 1983 (NAD 83).

This special anchorage area would be limited to vessels no greater than 65 feet in length. Vessels not more than 65 feet in length are not required to sound signals as required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) nor exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C. 2030) when at anchor in a special anchorage area.

Additionally, mariners using the anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with any additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this proposal conforms to the changing needs of the Town of Weymouth, the changing needs of recreational, fishing and commercial vessels, and makes the best use of the available navigable water. This proposed special anchorage area, while in the interest of safe navigation and protection of the vessels moored at the Town of Weymouth, does not impede the passage of vessels intending to transit Weymouth Fore River. Thus, the special anchorage area will have a minimal economic impact.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of recreational or commercial vessels intending to transit in a portion of the Weymouth Fore River in and around the special anchorage area. However, this anchorage area would not have a significant economic impact on these entities for the following reasons: The proposed special area does not impede the passage of vessels intending to transit in and around Weymouth, which include both small recreational and large commercial vessels. Thus, the special anchorage area will not impede safe and efficient vessel transits in Weymouth Fore River.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro, Waterways Management Branch, First Coast Guard District Boston at (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule fits the category selected from paragraph (34)(f) as it would establishing a special anchorage area.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review and documentation.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.30, by redesignating paragraph (k) as paragraph (k)(1) and adding paragraph (k)(2) to read as follows:

§ 110.30 Boston Harbor, Mass., and adjacent waters.

* * * * *

(k)(2) Weymouth Fore River, in the vicinity of Gull Point (PT). All of the waters enclosed by a line beginning at latitude 42°15′05″ N, longitude 70°57′26″ W; thence to latitude 42°15′00″ N, longitude 70°57′26″ W; thence to latitude 42°15′15″ N, longitude 70°56′50″ W; thence to latitude 42°15′18″ N, longitude 70°56′50″ W; thence to the point of the beginning. *DATUM:* NAD 83.

Note to paragraph (k)(2): The area is principally for use by recreational craft. All anchoring in the area shall be under the supervision of the local harbor master or such other authority as may be designated by the authorities of the Town of Weymouth, Massachusetts. All moorings are to be so placed that no moored vessel will extend beyond the limit of the anchorage area.

* * * * *

Dated: January 17, 2008.

Timothy S. Sullivan,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. E8–2692 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. EPA–R02–OAR–2008–0078; FRL–8529–9]

Determinations of Attainment of the Eight-Hour Ozone Standard for Various Ozone Nonattainment Areas in Upstate New York State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to determine that three ozone nonattainment areas in New York, the Albany-Schenectady-Troy, Jefferson County and Rochester areas, have attained the eight-hour National Ambient Air Quality Standard for ozone. New York State has requested these determinations, which are based upon three years of complete, quality-assured ambient air monitoring data for the years 2004–2006. These data demonstrate that the eight-hour ozone standard has been attained in these areas. In addition, data for 2007 show that the areas continue to attain the standard. If these proposed determinations are made final, the requirements for the State to submit certain reasonable further progress

plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of the eight-hour ozone standard shall be suspended for so long as the areas continue to attain the eight-hour ozone standard. One area requested by New York, Essex County, does not have sufficient air quality data to demonstrate attainment of the standard. EPA is not proposing to act on New York State's request for Essex County at this time.

DATES: Comments must be received on or before March 17, 2008. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2008–0078, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: Werner.Raymond@epa.gov.*
- *Fax:* 212–637–3901.
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2008–0078. 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 *http://www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Robert F. Kelly, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

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II. Background
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I. Proposed Action

The EPA is proposing to determine that three ozone nonattainment areas in New York, the Albany-Schenectady-Troy, Jefferson County and Rochester areas, have attained the eight-hour National Ambient Air Quality Standard (NAAQS) for ozone. These determinations are based upon three years of complete, quality-assured ambient air monitoring data for the years 2004–2006. These data demonstrate that the eight-hour ozone NAAQS has been attained in these areas. In addition, data for 2007 show that the areas continue to attain the standard. Pursuant to 40 CFR section 51.918, if these proposed determinations are made final, the requirements for the State to submit certain reasonable further progress plans, attainment demonstrations, and contingency measures under section 172(c)(9) and any other planning State Implementation Plans (SIPs) related to attainment of the eight-hour ozone NAAQS, will be suspended for so long as the area continues to attain the ozone NAAQS.

II. Background

On April 30, 2004 (69 FR 23857), EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. At that time, a number of areas in New York State, including the areas discussed in this notice, were designated as nonattainment. The Albany-Schenectedy-Troy area encompasses its 1999 metropolitan area, plus Greene County which was part of the previously existing one-hour ozone area. The Rochester area is the 1999 metropolitan area. Jefferson County is not part of a metropolitan area and was designated nonattainment as a single county. Air monitoring data on Whiteface Mountain violated the air quality standard but surrounding areas at lower elevations did not violated the standard, so the portion of Essex County above 1900 feet in the Whiteface Mountain area was designated as nonattainment. (See 40 CFR 81.333.)

On March 19, 2007, New York State Department of Environmental Conservation (New York) petitioned to EPA to find that air monitoring data from four areas of upstate New York were showing attainment of the eight-hour ozone standard for the most recent three years of ozone data, from 2004 to 2006. These areas were the Albany-Schenectady-Troy, Jefferson County, Essex County and Rochester nonattainment areas. On June 14, 2007, New York updated its submittal to document its public review process, including notice and comment.

EPA's ozone implementation rule at 40 Code of Federal Regulations (CFR) sections 51.900–918, promulgated under sections 172 and 182 of the Clean Air Act, describes the Clean Air Act requirements for areas designated as not attaining the eight-hour ozone standard. For areas where air quality is attaining the standard, section 51.918 of the implementation rule provides that, upon a determination of attainment by EPA, the requirements for a State to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress plans and contingency measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above. If this rulemaking is finalized and EPA subsequently determines after notice and comment rulemaking in the **Federal Register** that any of these areas have violated the standard, the basis for the suspension of these requirements for that area would no longer exist, and the area would thereafter have to address the pertinent requirements within a reasonable period of time. EPA would establish that period taking into account the individual circumstances

surrounding the particular submissions at issue.

The determinations that EPA proposes with this **Federal Register** notice, that air quality data show attainment of the ozone standard, are not equivalent to the redesignation of the areas to attainment. Using monitoring data to show attainment of the ozone NAAQS is only one of the criteria set forth in Clean Air Act section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the State must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of section 107(d)(3)(E), including a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and a fully-approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully-approved maintenance plan.

III. Analysis of Air Quality Data

In New York's petition, it certified the air quality data submitted by the State for the years 2004, 2005, and 2006 was accurate and properly quality-assured and met state and EPA monitoring requirements. New York submitted these data to EPA's Air Quality System, where it is available to the public via *http://www.epa.gov/ttn/airs/airsaqs/*. After New York submitted its petition, New York supplied additional quality-assured air quality data from 2007 to EPA's Air Quality System database. EPA has reviewed these data to determine if the areas proposed by New York remain in attainment when the additional data from 2007 are included. Table I summarizes the ozone air quality data for these four areas of upstate New York and EPA's evaluation of whether these areas meet EPA's requirements for attaining the eight-hour ozone NAAQS.

TABLE I.—FOURTH HIGHEST CONCENTRATIONS AND DESIGN VALUES FOR THE EIGHT-HOUR OZONE STANDARD FOR MONITORING SITES IN FOUR AREAS OF UPSTATE NEW YORK

[In parts per million]

Area/Site/EPA Site ID	Fourth highest concentration				Average of fourth highest concentration		Attainment	
	2004	2005	2006	2007	2004–6	2005–7	2004–6	2005–7
Albany-Schenectady-Troy, NY	.....	.....	.....	.....	.....	.....	Yes	Yes.
Loudonville 360010012	0.072	0.080	0.069	0.075	0.073	0.074	.....	
Schenectady 360930003	0.068	0.077	0.061	0.067	0.068	0.068	.....	
Grafton Lakes 360830004	0.076	0.081	0.072	0.078	0.076	0.077	.....	
Stillwater 360910004	0.077	0.084	0.073	0.081	0.078	0.079	.....	
Essex Co. (Whiteface Mt.), NY	.....	.....	.....	.....	.....	.....	No*	No.*
Whiteface Mt. Summit, NY 360310002	0.077	0.079	0.071	0.084	0.071	0.078	.....	
Whiteface Mt. Base, NY 360310003	0.071	0.073	0.071	0.078	0.078	0.074	.....	
Jefferson Co., NY 360450002	0.071	0.083	0.073	0.083	0.075	0.077	Yes	Yes.
Rochester, NY	.....	.....	.....	.....	.....	.....	Yes	Yes.
Rochester #2 360551007	0.057	0.080	0.081	0.078	0.072	0.079	.....	
Williamson 361173001	0.065	0.065	0.065	0.081	0.065	0.070	.....	

Note: All values in parts per million (ppm).

*Whiteface Mountain Summit monitor recorded less than 75% data capture for the ozone seasons of 2004 and 2005 and does not have complete data for those years. The design value is the average of each year's fourth highest concentration as described in Appendix I to 40 CFR part 50. From 40 CFR part 50, Appendix I, Section 2.2: The standard-related summary statistic is the annual fourth-highest daily maximum 8-hour average ozone concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations shall be expressed to three decimal places (the remaining digits to the right are truncated.)

As noted in Table I, an area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR part 50, Appendix I. In this case, all of the sites have a design value less than 0.085 ppm, but the Whiteface Mountain summit site in Essex County does not have complete data for 2004 and 2005, so there is not enough data to ensure the area is meeting the standard. Appendix I of 40 CFR part 50 stipulates that in order to be used for showing attainment of the standard, the three years of data must have an average percent of days with valid ambient monitoring data of greater than 90%, and no single year with less than 75% data completeness. The monitor at the summit of Whiteface Mountain recorded 64 and 74 percent of the required data in 2004 and 2005, respectively. Therefore, Essex County does not have sufficient data to support a determination that it is an area attaining the eight-hour ozone standard, and EPA is not proposing in this notice to make such a determination.

EPA proposes to determine that quality-assured data from 2004 through 2006 from Albany-Schenectady-Troy, Jefferson County and Rochester demonstrate that these areas met the eight-hour ozone standard. EPA has reviewed the latest quality-assured data, through September 2007, and preliminary data through the end of the ozone season of 2007 to insure that these areas still attain the ozone standard.

EPA notes that New York's March 19, 2007 and June 14, 2007 requests also petitioned EPA to find that the Albany-Schenectady-Troy, Jefferson County, Essex County and the Buffalo-Niagara one-hour ozone nonattainment areas were showing attainment of the one-hour ozone standard. (The Rochester area was not designated as nonattainment for the one-hour standard, only the eight-hour standard.) EPA is not addressing that portion of the petition in this notice, but intends to propose action on this part of New York's request in a future, separate **Federal Register** notice.

EPA is soliciting public comments on the issues discussed in this notice. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in the **ADDRESSES** section of this **Federal Register**.

IV. Summary

EPA is proposing to determine that the Albany-Schenectady-Troy, Jefferson County and Rochester ozone nonattainment areas have attained the eight-hour ozone standard based on three years of complete, quality-assured monitoring data at all ozone monitoring sites in the areas. Data through the 2007 ozone season demonstrate that the areas continue to attain the standard. As provided in 40 CFR 51.918, if EPA's determinations that these areas have attained the eight-hour ozone standard are made final, they would suspend the requirements under section 182(b)(1) for submission of the reasonable further progress plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning submission of contingency measures and any other planning SIP relating to attainment of the eight-hour NAAQS. This suspension of requirements would be effective as long as the areas continue to attain the eight-hour ozone standard. EPA will await additional, complete data before determining whether the Whiteface Mountain area in Essex County is attaining the standard.

EPA emphasizes that its proposed determinations are contingent upon the continued monitoring and continued attainment and maintenance of the eight-hour ozone NAAQS in these affected areas. If these determinations are finalized and EPA subsequently determines, after notice and comment rulemaking, that an area violated the standard, the basis for the suspension of the planning requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to make a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to make a determination based on air quality data and would, if finalized, result in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks''(62 FR 19885, April 23, 1997), because it proposes to determine that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act.

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

Under Executive Order 12898, EPA finds that this rule involves a proposed determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: February 6, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E8–2781 Filed 2–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA–R08–RCRA–2006–0501 FRL–8524–6]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revisions and Incorporation by Reference of Approved Hazardous Waste Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: North Dakota has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA proposes to grant final authorization to the hazardous waste program changes submitted by North Dakota. In addition, EPA is proposing to codify in the regulations entitled ''Approved State Hazardous Waste Management Programs'', North Dakota's authorized hazardous waste program. EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State statutes and regulations that are authorized and that EPA will enforce under the Solid Waste Disposal Act, as amended and commonly referred to as RCRA. In the ''Rules and Regulations'' section of this **Federal Register**, we are authorizing the State's program changes and codifying and incorporating by reference the authorized hazardous waste program as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments to oppose them. We have explained the reasons for this authorization and incorporation-by-reference in the preamble to the immediate final rule. Unless we get written comments opposing this authorization and incorporation by reference during the comment period, the immediate final rule will become

effective and the Agency will not take further action on this proposal. If we receive comments that oppose these actions, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will then address public comments in a later final rule based on this proposal. Any parties interested in commenting on these actions must do so at this time. EPA may not provide further opportunity for comment.

DATES: Comments must be received on or before March 17, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2006–0501, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*Follow the on-line instructions for submitting comments.
- *E-mail: daly.carl@epa.gov.*
- *Fax:* (303) 312–6341.
- *Mail:* Send written comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery or Courier:* Deliver your comments to Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, Mailcode 8P–HW, 1595 Wynkoop Street, Denver, CO 80202–1129. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–RCRA–2006–0501. EPA's policy is that all comments received will be included in the public docket without change, 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 federal web site, *http://www.regulations.gov,* 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 or 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 either electronically through *www.regulations.gov* or in hard copy at: EPA Region 8, from 9 a.m. to 4 p.m., 1595 Wynkoop Street, Denver, Colorado, contact: Carl Daly, phone number (303) 312–6416, or the North Dakota Department of Health (NDDH) from 9 a.m. to 4 p.m., 1200 Missouri Ave, Bismarck, ND 58504–5264, contact: Curt Erickson, phone number (701) 328–5166. The public is advised to call in advance to verify the business hours.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Solid and Hazardous Waste Program, U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6416, *daly.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: January 22, 2008.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E8–2158 Filed 2–13–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 73, No. 31

Thursday, February 14, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995. Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0554.

Form Number: None.

Title: Training Results and Information Network (TraiNet).

Type of Submission: Information Collection Revision.

Purpose: The purpose of this information collection is program evaluation, general purpose statistics, program planning and management, and regulatory or compliance.

Annual Reporting Burden:

Respondents: 350.

Total annual responses: 11,261.

Total annual hours requested: 1,914 hours.

Dated: February 6, 2008.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 08–646 Filed 2–13–08; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and the regulations of the Council on Environmental Quality, which implements the procedural aspects of NEPA (40 CFR 1500–1508). APHIS' regulations require APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the number of collected samples, description of the samples, the environmental conditions at the collection site including wind speed and direction, temperature, humidity of rainfall, and topography. The supporting information contained on the APHIS form 2060 is vital for interpreting the laboratory tests APHIS conducts on its collected samples. Failure to collect this information would prevent APHIS from actively monitoring the effects of pesticides in areas where the inappropriate use of these chemicals could eventually produce disastrous results for vulnerable habitats and species.

Description of Respondents: State, Local or Tribal Government; individuals or households; farms.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,500.

Animal and Plant Health Inspection Service

Title: Export Certification, Accreditation of Non-Government Facilities.

OMB Control Number: 0579–0130.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, as well as, the spread of pests not widely distributed in the United States, and eradicating those imported when eradication is feasible. The Plant Quarantine Act and the

Federal Pest Act authorizes the Department to carry out this mission. The regulations in 7 CFR Part 353 describes the procedures for obtaining certification for plants and plant products offered for export or re-export. APHIS provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant diseases and insect pests.

Need and Use of the Information: APHIS will collect information for applications submitted by operator/owner of a non-government facility seeking accreditation to conduct laboratory testing or phytosanitary inspection. The application should contain the legal name and full address of the facility, the name, address, telephone and fax numbers of the facility's operator, a description of the facility, and a description of the specific laboratory testing or phytosanitary inspection services for which the facility is seeking accreditation. If these activities are not conducted properly, the APHIS export certification program would be compromised, causing a disruption in plant and plant product exports that could prove financially damaging to U.S. exporters.

Description of Respondents: Business or other for profit.

Number of Respondents: 15.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 300.

Animal and Plant Health Inspection Service

Title: Importation of Tomatoes from France, Morocco, Western Sahara, Chile, and Spain.

OMB Control Number: 0579–0131.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States, as well as the spread of pests not widely distributed and eradicating those imported when eradication is feasible. Regulations in 7 CFR 319.56 through 319.56–8 prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies. These regulations allow tomatoes from Spain, Chile, France, Morocco, and Western Sahara to be imported into the United States (subject to certain conditions).

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information using the phytosanitary certificate certifying that the tomatoes were grown in registered greenhouses in a specified area of the exporting country. APHIS uses the information on this certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. If the information is not collected, APHIS' ability to protect the United States from exotic insect pests would be severely compromised.

Description of Respondents: Business or other for profit.

Number of Respondents: 34.

Frequency of Responses: Recordkeeping; Reporting: On Occasion.

Total Burden Hours: 1,704.

Animal and Plant Health Inspection Service

Title: Black Stem Rust; Identification Requirements and Addition of Rust-Resistant Varieties.

OMB Control Number: 0579–0186.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701–772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant products to prevent the introduction of plant pests into the United States or their dissemination within the United States. Black stem rust is one of the most destructive plant diseases of small grains that are known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of infected wheat, oat, barley, and rye crops by robbing host plants of food and water.

Need and Use of the Information: APHIS will collect information to prevent the spread of black stem rust by providing for and requiring the accurate identification of rust-resistant varieties by inspectors.

Description of Respondents: Business or other for profit.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 32.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–2778 Filed 2–13–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Commercial Use of Woodsy Owl Symbol—36 CFR Part 272.

OMB Control Number: 0596–0087.

Summary Of Collection: The Forest Service National Symbols Coordinator will evaluate the data to determine if an individual corporation, or organization, requesting a license to use the Woodsy Owl symbol commercially should be granted a license or, if currently licensed, to determine the royalty fee the licensed entity must pay to the agency based on a percentage of the licensee's total sales and whether the licensed entity has met its stated objectives. Part 272 of Title 36 CFR authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect royalty fees for such use. An individual or corporation may apply for a Woodsy Owl license by contacting Forest Service personnel by telephone, fax, and e-mail or by writing.

Need and Use of the Information: FS will collect information to determine how long the individual, corporation, or organization has been in business; the products the individual, corporation, or organization sells or plans to sell; the geographical location from which the products will be sold; the projected sales volume; and how the individual, corporation, or organization plans to market the products. If information is not collected royalty fees would not be collected in keeping with federal cash management policies, and quantity of merchandise objectives would not be effectively monitored.

Description of Respondents: Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 63.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–2786 Filed 2–13–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: USDA Farmers Market Application.

OMB Control Number: 0581–0229.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(n) authorizes the Secretary to conduct services and to perform activities that will facilitate the marketing and utilization of agricultural products through commercial channels. The Agricultural Marketing Service (AMS) is authorized to implement established regulations and procedures under 7 CFR part 170 for AMS to operate the U.S. Department of Agriculture (USDA) Farmers Market, specify vendor criteria and selection procedures, and define guidelines to be used for governing the USDA Farmers Market annually. Information will be collected on form TM–28, ''USDA Farmers Market Application.''

Need and Use of the Information: The application was developed to ensure a uniform and fair process for deciding which farm operations are allowed to participate in the market, as well as ensure diversity of product for consumers. AMS will collect information to review the type of products available for sale and selecting participants for the annual market season. The information collected consists of (1) certification that the applicant is the owner or a representative of the farm or business; (2) name(s), address, telephone number and e-mail address; (3) farm or business location; (4) types of products grown; (5) business practices; and (6) insurance coverage.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 20.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–2788 Filed 2–13–08; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Business and Cooperative Programs.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Business and Cooperative Programs' intention to request an extension for a currently approved information collection in support of the program for the Business and Industry Loan Program.

DATES: Comments on this notice must be received by April 14, 2008 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: David Lewis, Chief, Business and Industry Division, Servicing Branch, Business and Cooperative Programs, U.S. Department of Agriculture, Stop 3224, telephone (202) 690–0797, or e-mail *david.lewis@wdc.usda.gov.* The Federal Information Relay service on (800) 887–8339 is available for TDD users.

SUPPLEMENTARY INFORMATION:

Title: Business and Industry Loan Program.

OMB Number: 0570–0014.

Expiration Date of Approval: August 31, 2008.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract: The collected information is submitted to the B&I loan official by loan applicants and commercial lenders for use in making program eligibility, financial feasibility determinations and loan security determinations as required by the Con Act.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Individuals, rural businesses, for profit businesses, non-profit businesses, Indian tribes, public bodies, cooperatives.

Estimated Number of Respondents: 152.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 325.

Estimated Total Annual Burden on Respondents: 835 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, at (202) 692–0035.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Business and Cooperative Programs, including whether the information will have practical utility; (b) the accuracy of Business and Cooperative Programs estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 8, 2008.

Ben Anderson,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E8–2817 Filed 2–13–08; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2008–0001]

Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling (CCMAS)

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA) are sponsoring a public meeting on February 28, 2008. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 29th Session of the Codex Committee on Methods of Analysis and Sampling (CCMAS) of the Codex Alimentarius Commission (Codex), which will be held in Budapest, Hungary on March 10–14, 2008. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 29th Session of the CCMAS and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, February 28, 2008, from 2 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held in Conference Room 1A 001 of the Harvey W. Wiley Building located at 5100 Paint Branch Parkway, College Park, Maryland. Documents related to the 29th Session of the CCMAS will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

The U.S. Delegate to the 29th session of the CCMAS, Dr. Gregory Diachenko, FDA, invites interested U.S. parties to submit their comments electronically to the following e-mail address: *gregory.diachenko@fda.hhs.gov*.

Registration

To gain admittance to this meeting, individuals must present a photo ID for identification and also are required to pre-register. In addition, no cameras or videotaping equipment will be permitted in the meeting room. To pre-register, please send the following information to this e-mail address: *gregory.diachenko@fda.hhs.gov* by February 25, 2008:

Your Name _____

Organization _____

Mailing Address _____

Phone number _____

E-mail address _____

For Further Information About the 29th Session of the CCMAS Contact: Dr. Gregory Diachenko, Director, Division of Analytical Chemistry, Center for Food Safety and Applied Nutrition (HFS–705), FDA, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, Maryland 20740. Phone (301) 436–1898; Fax (301) 436–2634, E-mail: *gregory.diachenko@fda.hhs.gov*.

For Further Information About the Public Meeting Contact: Syed Amjad Ali, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service (FSIS), Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700. Phone (202) 205–7760; Fax (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCMAS was established to perform multiple functions; define criteria appropriate for Codex methods of analysis and sampling; specify reference methods of analysis and sampling; endorse methods of analysis and sampling proposed by Codex Committees; elaborate sampling plans; and consider specific sampling and analysis problems. The Committee is hosted by Hungary.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 29th Session of the CCMAS will be discussed during the public meeting:

- Matters Referred by the Codex Alimentarius Commission and other Codex Committees
- Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis
- Proposed Draft Guidelines for Settling Disputes on Analytical (Test) Results
- Proposed Draft Guidelines on Analytical Terminology for Codex Use
- Criteria for Methods of Detection and Identification of Foods Derived from Biotechnology
- Conversion of the Methods for Trace Elements into Criteria
- Guidance on Measurement Uncertainty and Uncertainty of Sampling

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents on the World Wide Web (see **ADDRESSES**).

Public Meeting

At the February 28, 2008, public meeting, draft U.S. positions on the

agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 29th Session of the CCMAS (see **ADDRESSES**). Written comments should state that they relate to activities of the 29th Session of the CCMAS.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2008_Notices_Index/*. FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC on February 8, 2008.

Karen L. Hulebak,

Acting U.S. Manager for Codex Alimentarius.

[FR Doc. E8–2760 Filed 2–13–08; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project updates from 2007. Agenda topics will include fire smoke and air quality issues, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on February 26, 2008, 6:30 p.m.

ADDRESSES: The meeting will be held at teh Bitterroot National Forest, Supervisor Office, 1801 N. First Street, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Daniel G. Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: February 7, 2008.

David T. Bull,

Forest Supervisor.

[FR Doc. 08–645 Filed 2–13–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the National Childhood Injury and Occupational Injury Survey of Farm Operators. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by April 14, 2008 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0235, by any of the following methods:

- *E-mail: omb officer@nass.usda.gov*. Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD-ROM submissions to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 A, Mail Stop 2024, South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 A South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: National Childhood Injury and Occupational Injury Survey of Farm Operators.

OMB Control Number: 0535–0235.

Expiration Date of Approval: 06/30/2008.

Type of Request: To extend and revise its title and scope of the currently approved information collection to The National Childhood Injury and Occupational Injury Survey of Minority Farm Operators.

Abstract: The National Childhood Injury and Occupational Injury Survey of Minority Farm Operators is designed to: (1) Provide estimates of childhood nonfatal injury incidence and description of injury occurring to children less than 20 years of age who reside on, work on, or visit minority farms and (2) describe the occupational injury experience of minority farm operators. Data will be collected by telephone from all 50 states with 25,000 operations receiving a Childhood Injury version only and 25,000 receiving a combined Childhood Injury and Occupational Injury version. Questions will relate to injury problems occurring during the 2008 calendar year.

These data will update and enhance existing data series used by the National Institute of Occupational Safety and Health to: (1) Establish a measure of the number and rate of childhood injuries associated with farming operations and study the specific types of injuries sustained and (2) describe the scope and

magnitude of occupational injuries associated with farming operations. The collection combines the childhood and occupational injury studies to reduce the number of contacts on the targeted farm population.

Reports will be generated and information disseminated to all interested parties concerning the finding of this study.

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13 codified at 44 U.S.C. 3501, et seq.) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995).

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response for the childhood injury questions and 10 minutes for the combined interview; screen-outs will be allowed early in both instruments if no injuries were incurred.

Respondents: Farm operators.

Estimated Number of Respondents: 50,000.

Estimated Total Annual Burden on Respondents: 5,400 hours.

Copies of this information collection and related instructions can be obtained without charge from the YA NASS Clearance Officer, at (202) 720–2248.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 14, 2008.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E8–2757 Filed 2–13–08; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by AES Sparrows Point LNG, LLC and Mid-Atlantic Express, LLC

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of stay—closure of administrative appeal decision record.

SUMMARY: This announcement provides notice that the Secretary of Commerce has stayed, for a period of 60 days, closure of the decision record in an administrative appeal filed by AES Sparrows Point, LLC and Mid-Atlantic Express, LLC (AES Consistency Appeal).

DATES: The decision record for the AES Consistency Appeal will now close on April 14, 2008.

ADDRESSES: Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Odin-Smith, Attorney-Advisor, Office of the General Counsel, via e-mail at *gcos.inquiries@noaa.gov,* or at (301) 713–7392.

SUPPLEMENTARY INFORMATION: In August 2007, AES Sparrows Point, LLC and Mid-Atlantic Express, LLC (AES or Appellant) filed an appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA). The appeal was taken from an objection by the Maryland Department of the Environment (State), relating to AES' proposal to construct and operate a liquefied natural gas terminal in Baltimore County, Maryland, and an associated 88-mile natural gas pipeline.

Under the CZMA, the Secretary must close the decision record in an appeal 160 days after the notice of appeal is published in the **Federal Register**. However, the CZMA authorizes the Secretary to stay closing the decision record for up to 60 days when the Secretary determines it necessary to receive, on an expedited basis, any supplemental information specifically requested by the Secretary to complete a consistency review or any clarifying information submitted by a party to the proceeding related to information in the consolidated record compiled by the lead Federal permitting agency.

After reviewing the AES Consistency Appeal decision record developed to date, the Secretary has decided to solicit supplemental and clarifying information. In order to allow receipt of this information, the Secretary hereby stays closure of the decision record, currently scheduled to occur on February 14, 2008, until April 14, 2008.

Additional information about the AES Consistency Appeal and the CZMA appeals process is available from the Department of Commerce CZMA appeals Web site *http://www.ogc.doc.gov/czma.htm.*

Dated: February 11, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. E8–2814 Filed 2–13–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Gulf of Mexico Red Snapper IFQ Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 14, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be

directed to Jason Rueter, (727) 824–5350 or *jason.rueter@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Alaska Region manages the red snapper fishery in the waters of the Gulf of Mexico under the Reef Fish Fishery Management Plan (FMP). The Gulf of Mexico red snapper fishery is overcapitalized. This overcapitalization has led to derby fishery conditions. The Individual Fishing Quota (IFQ) program reduced overcapacity and eliminated derby ''race'' fishing conditions in the fishery. As part of this program, the Southeast Regional Office needs to collect percent ownership in a corporation from IFQ participants. The IFQ program has a cap on share percent ownership of six percent. Without the ability to track corporate shareholder information, NOAA Fisheries Service will be unable to enforce this share ownership cap. The regulations implementing the FMP are at 50 CFR part 622.

The recordkeeping and reporting requirements at 50 CFR part 622 form the basis for this collection of information. NMFS Southeast Region requests information from IFQ participants. This information, upon receipt, results in an increasingly more efficient and accurate database for management and monitoring of the red snapper IFQ program in the Gulf of Mexico EEZ.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants, and methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0551.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profit organizations.

Estimated Number of Respondents: 1,417.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 24 (1,039 total).

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 8, 2008

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–2683 Filed 2–13–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 14, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Rueter, (727) 824–5350 or *jason.rueter@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Sustainable Fisheries Division, Southeast Regional Office, National Marine Fisheries Service (NMFS), is entrusted with the conservation, management, and protection of marine fishery resources inhabiting federal waters off the southeastern United States from North Carolina through Texas and Puerto Rico and the U.S. Virgin Islands. The Division is the Region's focal point for implementing NMFS's primary legislative authority for fisheries management and research, the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act (SFA).

The Division works directly with the Region's three fishery management councils established by Congress to perform the mandates of the Magnuson-Stevens Act. These mandates are accomplished through fishery management plans for marine finfish and crustaceans that support important commercial and recreational fisheries in the Gulf of Mexico, South Atlantic Ocean, and Caribbean Sea and consider conservation and management issues, sociological and economic issues, and regulatory issues. Functions and activities required to fulfill this and other responsibilities as specified in the Magnuson-Stevens Act include: Providing guidance on fisheries management; providing technical assistance and advice in preparing fishery management plans (FMP) in accordance with national standard guidelines and other applicable laws; coordinating public review and compilation of comments; initiating Secretarial review of FMP and amendments; drafting regulations and **Federal Register** notices, as well as reviewing and responding to comments received during rulemaking; FMP implementation; and monitoring.

A major component of fisheries management in the Region is the permit system and the information collected by these permits. The permit/endorsement system has the following uses:

a. Registration of actual and/or potential fishing vessels/dealers.

b. Collection of data relevant to the characteristics of both vessels and (potential) fishermen.

c. Secure compliance (e.g., do not issue permits until unpaid penalties have been collected and reporting requirements are fulfilled).

d. Provide a mailing list for the dissemination of regulatory information.

e. Register participants for fisheries with special restrictions/limited access.

f. Provide sample frames for data collection.

g. Permit purchase information for fleet economic analyses.

Accordingly, numerous FMP and amendments have been developed by the Region which requires the collection of information for purposes of proper implementation of these rules. Regulations implementing the FMP and their collection of information appear at 50 CFR 600.305, 50 CFR 600.315, and 50 CFR 622.5.

The need to collect percent ownership in a corporation from permit holders is necessary information for the red snapper Individual Fishing Quota (IFQ) program. The IFQ program has a cap of six percent on share percent ownership. Without the ability to track corporate shareholder information, NOAA Fisheries Service will be unable to enforce this share ownership cap. Additionally, crew size is being collected to better understand the nature of the fishery, the number of participants who are not permit holders, and the potential socioeconomic effects of regulations within a given fishery.

II. Method of Collection

Paper applications, electronic reports, and telephone calls are required from participants. Methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0205.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions; and business or other for-profit organizations.
Estimated Number of Respondents: 16,820.
Estimated Time per Response: 1 hour and 24 minutes.
Estimated Total Annual Burden Hours: 15,671.
Estimated Total Annual Cost to Public: $650,679.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 8, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–2687 Filed 2–13–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Joint Subcommittee on Ocean Science and Technology Interagency Working Group on Ocean and Coastal Mapping

ACTION: Notice of public workshop.

SUMMARY: The Interagency Working Group on Ocean and Coastal Mapping (IWG–OCM), established under the governance of the Joint Subcommittee on Ocean Science and Technology (JSOST), will host a workshop from Tuesday, February 26, 2008, until Thursday, February 28, 2008, to support the development of a National Ocean and Coastal Mapping Strategic Action Plan. Participation is by invitation only; however, plenary sessions will be open to the public.

Dates and Times: The public plenary sessions will be on Tuesday, February 26, 2008, from 9 a.m.–5 p.m. and on Thursday, February 28, 2008, from 9 a.m.–1 p.m.

Location: Florida Atlantic University SeaTech Campus, Auditorium (Room 205), 101 North Beach Road, Dania Beach, Florida 33004.

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining additional information including a workshop agenda should visit *http://www.csc.noaa.gov/iwg/* or contact Carol Jeffords or Tricia Gibbons at 703–642–0972.

SUPPLEMENTARY INFORMATION: In response to the findings of the U.S. Ocean Action Plan, JSOST established the IWG–OCM in 2006. This interagency working group—co-chaired by the U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, U.S. Geological Survey, and Minerals Management Service—seeks to avoid duplication of mapping ocean and coastal mapping activities and facilitate the coordination and leveraging of mapping resources across the federal sector and with state, industry, academic, and non-governmental organization mapping interests. The workshop will bring together individuals from federal mapping agencies, non-federal mapping interests, and stakeholders to frame a Strategic Action Plan designed to expand, improve, and/or develop (a) coordination and partnerships; (b) data collection, availability, dissemination, interoperability, and standardization; and (c) products and tools required of ocean and coastal geospatial data users.

The public plenary sessions are accessible to people with physical disabilities. Public comment periods will be scheduled at the end of the day's deliberations on Tuesday and Thursday. Each individual or group wishing to make a verbal presentation will be limited to a total time of five (5) minutes. Approximately fifteen (15) seats will be available for the public on a first-come, first-served basis.

Dated: February 4, 2008.

Captain Steven Barnum,

Director, Office of Coast Survey.

[FR Doc. E8–2753 Filed 2–13–08; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 14, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested,

e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 11, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Financial Status and Program Performance Final Report for State and Partnership for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP).

Frequency: One time.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 175.

Burden Hours: 6,125.

Abstract: The purpose of this information collection is to determine whether recipients of GEAR UP have made substantial progress towards meeting the objectives of their respective projects, as outlined in their grant applications and/or subsequent work plans. In addition, the final report will enable the Department to evaluate each grant project's fiscal operations for the entire grant performance period, and compare total expenditures relative to federal funds awarded, and actual cost-share/matching relative to the total amount in the approved grant application. This report is a means for grantees to share the overall experience of their projects and document achievements and concerns, and describe effects of their projects on participants being served; project barriers and major accomplishments; and evidence of sustainability. The report will be GEAR UP's primary method to collect/analyze data on students' high school graduation and immediate college enrollment rates.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3593. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW, LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–2815 Filed 2–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 17, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: February 11, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension of a currently approved collection.

Title: Migrant Education Program (MEP) Regulations, Sections 200.83, 200.84, and 200.88.

Frequency: Other: Biennially.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 43.

Burden Hours: 19,925.

Abstract: Section 200.83 of the regulations for title I, part C establish the minimum requirements an SEA must meet for development of a comprehensive needs assessment and plan for service delivery as required under section 1306(b) of the Elementary and Secondary Education Act (ESEA), as amended (Pub. L. 107–110). Section 200.84 of the regulations establish the minimum requirements the SEA must meet to implement the program evaluation required under section 1304(c)(2) of the Elementary and Secondary Education Act (ESEA). Section 200.88 of the regulations clarify that, for the purposes of the MEP, only ''supplemental'' State or local funds that are used for programs specifically

designed to meet the unique needs of migratory children can be excluded in terms of determining compliance with the ''comparability'' and ''supplement'', not ''supplant'' provisions of the statute.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3540. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–2816 Filed 2–13–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC08–603–000; FERC–603]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

February 7, 2008.

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c) (2) (a) of the Paperwork Reduction Act of 1995 (Pub. L. 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 by April 15, 2008.

ADDRESSES: Copies of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/legal/ceii-foia.asp*) or click on ''Legal Resources'', ''Critical Energy Infrastructure Information'' and then click on CEII Request form. Copies of the Non Disclosure Agreement (NDA) can be obtained from the Commission's Web site *http://www.ferc.gov/legal/ceii-foia/ceii/gen-nda.pdf.* Written comments may be submitted to 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 filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC08–603–000.

Documents filed electronically via the Internet must be prepared in the acceptable filing format and in compliance with the Federal Energy Regulatory Commission's submission guidelines. Complete filing instructions and acceptable filing formats are available at (*http://www.ferc.gov/help/submission-guide/electronic-media.asp*). To file the document electronically, access the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. 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–603 ''Critical Energy Infrastructure Information'' (OMB No. 1902–0197) is used by the Commission to implement procedures for gaining access to critical energy infrastructure information (CEII) that would not otherwise be available under the Freedom of Information Act (5 U.S.C. 552). On February, 21, 2003, the Commission issued Order No. 630 (66 FR 52917) to address the appropriate treatment of CEII in the aftermath of the September 11, 2001 terrorist attacks and to restrict unrestrained general access due to the ongoing terrorism threat. These steps enable the Commission to keep sensitive infrastructure information out of the public domain, decreasing the likelihood that such information could be used to plan or execute terrorist attacks. The process adopted in Order No. 630 is a more efficient alternative for handling requests for previously public documents than FOIA The Commission has defined CEII to include information about ''existing or proposed critical infrastructure that (i) relates to the production, generation, transportation, transmission, or distribution of energy; (ii) could be useful to a person planning an attack on critical infrastructure; (iii) is exempt from mandatory disclosure under the Freedom of Information Act, and (iv) does not simply give the location of the critical infrastructure. Critical infrastructure means existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters. A person seeking access to CEII may file a request for that information by providing information about their identity and reason as to the need for the information. Through this process, the Commission is able to review the requester's need for the information against the sensitivity of the information. The compliance with these requirements is mandatory.

Action: The Commission is requesting a three-year extension of the current expiration date, with changes to the existing collection of data. Specifically, the Commission seeks information on business references to assist in identification of the requester, and on the payment of fees for CEII requests and in particular the requester's obligation for payment.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden house per response (3)	Total annual burden hours (1)×(2)×(3)
200	1	.30	60

The estimated total cost to respondents is $3,646. The cost per respondent = $18. (60 hours @ $61 hourly rate (rounded off)).

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. E8–2720 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–117]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

February 7, 2008.

Take notice that the following hydroelectric 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:* 2146–117.

c. *Date Filed:* January 18, 2008.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* On the Coosa River, in Elmore County, Alabama and Floyd County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Keith Bryant, 600 18th Street North, Birmingham, AL 35203; (205) 257–1403.

i. *FERC Contact:* Gina Krump, Telephone (202) 502–6704, and e-mail: *Gina.Krump@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* March 3, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alabama Power Company is seeking Commission approval to issue a permit to RHEMA, LLC for the construction of a boat ramp, four boat docks, totaling 60 slips, walking trails, and two storm water drains. The proposed facilities would serve the residents of Sunset Shores Condominiums. APC is also seeking authorization to allow RHEMA, LLC to withdrawal of up to 2,400 gallons per day of water from the project reservoir for landscape watering, as needed. The proposal would not require dredging or excavation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a

party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2726 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1951–153]

Georgia Power Company; Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 7, 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:* 1951–153.

c. *Date filed:* January 18, 2008.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Sinclair Project.

f. *Location:* The project is located on the Oconee River in Baldwin and Putnam Counties, Georgia. The project does not occupy 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. Lee B. Glenn, Georgia Power Company, 125 Wallace Dam Road NE, Eatonton, GA 31024, (706) 485–8704.

i. *FERC Contact:* Rebecca Martin at 202–502–6012, or e-mail *rebecca.martin@ferc.gov*

j. *Deadline for filing comments and or motions:* March 7, 2008.

All documents (original and eight copies) should be filed with: The Secretary, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–1951–153) 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 whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* The licensee requests Commission approval to grant a permit to SOS Development, LLC for constructing nine, ten-slip, boat docks (11,970 square feet total), six of which would be located within coves; 15,050 linear feet (2.85 miles) of seawall, and a 200-square foot boat ramp. Since many of the boat docks would be constructed in currently unnavigable, shallow areas, approximately 7,800 cubic yards of dredging also would be performed. The proposed facilities and improvements would be as part of a development called ''The Sanctuary on Lake Sinclair,'' and would be used by its residents.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. *Comments,* protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2724 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5604–000]

Lee, John C., Jr.; Notice of Filing

February 7, 2008.

Take notice that on January 25, 2008, pursuant to section 305(b) of the Federal

Power Act, 16 U.S.C. 825(b), Part 45 of Title 18 of the Code of Federal Regulations and Order No. 664, 112 FERC 61,298, (2005), John C. Lee, Jr. filed an application for authority to hold interlocking positions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 15, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2721 Filed 2–13–08; 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

February 7, 2008.

On February 20, 2008, staff of the Office of Energy Projects (OEP) will hold a technical conference for the REX East Project. Rockies Express Pipeline LLC requested the Technical Conference to discuss compliance with Section 106 of the National Historic Preservation Act.

The technical conference will be held on Wednesday, February 20, 2008, at 1 p.m. (EST), in Room 3M–2B at the Commission Headquarters, 888 First Street, NE., Washington, DC.

Commission 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 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

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. E8–2731 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2206–033]

Progress Energy Carolinas, Inc; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

February 7, 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:* 2206–033.

c. *Date Filed:* December 7, 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 Shana High at (202) 502–8674.

j. *Deadline for filing comments and/or motions:* March 7, 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–2206–033) 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 authorization to permit Tillery Tradition Golf Villas Marina to construct a marina, boat landing and seawall. The construction would result in 91 boat slips and a pre-cast concrete boat landing. Currently, there are no boating facilities at this site.

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'', ''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. E8–2727 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–19–000]

Public Service Electric and Gas Company; Notice of Filing

February 7, 2008.

Take notice that on February 4, 2008, Public Service Electric and Gas Company submitted an amendment to its December 7, 2007 Petition for Declaratory Order.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2718 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 943–103]

Public Utility District No. 1 of Chelan County; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

February 7, 2008.

Take notice that the following hydroelectric 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.:* 943–103.

c. *Date Filed:* October 5, 2007.

d. *Applicant:* Public Utility District No. 1 of Chelan County, Washington.

e. *Name of Project:* Rock Island Hydroelectric Project.

f. *Location:* The project is located on the Columbia River in Chelan County, Washington. The project does not occupy any Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michelle Smith, License and Natural Resource Compliance Manager, Public Utility District No. 1 of Chelan County, P.O. Box 1231, Wenatchee, WA 98807–1231. Phone: (888) 663–8121, Ext. 4180.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175, or e-mail address: *Brian.Romanek@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* February 29, 2008.

k. *Description of the Application:* The Public Utility District No. 1 of Chelan County, Washington, licensee of the Rock Island Hydroelectric Project, has filed an application seeking authorization from the Federal Energy Regulatory Commission to remove 1.01 acres of land from Wenatchee Riverfront Park, and the hydroelectric project. The land would be conveyed to the City of Wenatchee (City). Also, the licensee proposes to add 0.87 acre of land to the park, and the project. This land exchange, which has been coordinated with the City, would accommodate a roadway corridor modification, consistent with the City's plans for improving riverfront access for the public. This modification would entail adding approximately 55 parking spaces and 170 linear feet of trails and walkways. In addition, the licensee proposes to remove from the project a 0.47 acre parcel of land that was discovered to be mistakenly included within the project boundary. The City is the fee-title owner of the parcel. It abuts the City's old water works building.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .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'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2729 Filed 2–13–08; 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

February 7, 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. EL07–101–000, EL05–121–003, ER07–1233–000, ER05–6–044, ER05–6–100, EL04–135–103, EL02–111–120, EL03–212–116, ER07–1261–000, EL04–135–046, EL02–111–064, EL03–212–060.	2–7–08	Mark Dempsey.
2. CP07–208–000	1–31–08	Sarah Lehman
Exempt:		
Project No. 11910–002	1–30–08	Rob Burns

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2717 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–30–000]

Rules Concerning Certification of the Electric Reliability Organization and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards; Notice of New Docket Prefix ''NP'' for Notices of Penalty Filed by the North American Electric Reliability Corporation

February 7, 2008.

Notice is hereby given that a new docket prefix ''NP'' has been established for Notices of Penalty filed by the North American Electric Reliability Corporation (NERC) pursuant to Order No. 672, issued February 3, 2006.[1]

Regional Entities have authority under Order No. 672 to assess penalties for violations of Reliability Standards approved by the Commission. After a Regional Entity assesses a penalty, NERC reviews it. If appropriate, NERC will make a filing with the Commission called a ''Notice of Penalty.''

Each ''Notice of Penalty'' will receive a new ''NP'' docket number.[2]

Notices of Penalty may be submitted using the Commission's electronic filing system (*http://www.ferc.gov/docs-filing/efiling.asp*). The Commission intends to release a new version of its electronic filing system on February 29, 2008. The new version will greatly expand the documents eligible for efiling and will eliminate the need for most of the special filing procedures currently posted on the Commission's Web site. If NERC plans to file any Notices of Penalty before February 29, 2008, NERC should contact the efiling Help Line (202–502–8258; *efiling@ferc.gov*) in advance of filing to request pre-assignment of an NP Docket Number. If NERC plans to file any Notice of Penalty that includes non-public information, or an entity seeks to file an Application for Review that includes non-public information, contact the efiling Help Line.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2730 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

[1] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards* (Order No. 672), III FERC Stats. & Regs. ¶ 31,204 (2006).

[2] The Commission had previously indicated that a Notice of Penalty will receive an ''RC'' docket number. *Notice of New RR, RD, and RC Prefixes*, issued April 7, 2006. The current Notice of New Docket Prefix supersedes our previous designation. The ''RC'' docket prefix will continue to be used for other filings relating to compliance with Reliability Standards, including appeals of registration decisions made by NERC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12551–001]

Salvatore and Michelle Shifrin; Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedual Schedule for Licensing and Deadline for Submission of Final Amendments

February 7, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–12551–001.

c. *Date Filed:* January 25, 2008.

d. *Applicant:* Salvatore and Michelle Shifrin.

e. *Name of Project:* Mansfield Hollow Hydro Power Project.

f. *Location:* On the Natchaug River in Tolland County, Connecticut. The project would occupy lands of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Salvatore or Michelle Shifrin, 78 Bricktop Road, Windham, CT 06280, (860) 423–7709.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Cooperating Agencies:* We are asking Federal, State, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: March 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.

Additional study requests and requests for cooperating agency status 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 at (*http://www.ferc.gov*) under the ''eFiling'' link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The Mansfield Hollow Hydro Power Project would consist of: (1) The existing 80-foot-long, 10-foot-high Kirby Mill Dam; (2) the existing 1.6-acre reservoir; (3) the existing headgate structure; (4) the existing 12-foot-wide, 8-foot-foot-high, 330-foot-long head race channel; (5) a new powerhouse containing five generating units with a total installed capacity of 500 kilowatts; (6) the existing 5-foot-wide, 7-foot-high, 100-foot-long conduit and 75-foot-long open tailrace; and (7) appurtenant facilities. The project would have an average annual generation of about 2,500 megawatt-hours.

In addition to a new powerhouse, project restoration would consist of: (1) A new 12-foot-wide, 8-foot-high, 330-foot-long head race channel; (2) a new 20-foot-wide, 8-foot-high, 20-foot-long box culvert connected to a new 25-foot-wide, 4-foot-high, 153-foot-long open channel tail race; and (3) a new 275-foot-long transmission line.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the 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. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances

related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Connecticut State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance Letter or Deficiency Letter.	April 2008.
Issue Scoping Document	May 2008.
Notice of application is ready for environmental analysis.	August 2008.
Notice of the availability of the EA.	April 2009.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2722 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12574–002]

Santiam Water Control District; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, Scoping Comments, and Waiving Pre-Filing Consultation

February 7, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Small Hydro Exemption from Licensing.

b. *Project No.:* P–12574–002.

c. *Date Filed:* June 18, 2007, and supplemented on July 18, 2007, pursuant to Order Denying Rehearing (119 FERC ¶ 61,159).

d. *Applicant:* Santiam Water Control District.

e. *Name of Project:* Stayton Hydroelectric Project.

f. *Location:* On the Stayton Ditch near the Town of Stayton, Marion County, Oregon. The project would not occupy United States land.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Larry Trosi, Manager, Santiam Water Control District, 284 East Water Street, Stayton, OR 97383, (503) 769–2669.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Deadline for filing motions to intervene, protests, and scoping comments:* 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, and scoping comments 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 ''eFiling'' link.

k. This application has been accepted for filing but is not ready for environmental analysis at this time.

l. Santiam Water Control District proposes to restore operation to the Stayton Project which was operated by Pacific Power until 1992. As proposed, the Stayton Project would consist of: (1) The existing power canal headgate structure and fish ladder, and the fish screen and 28-inch-diameter, 600-foot-long juvenile fish bypass return pipe located near the upstream end of Stayton Ditch; (2) the 0.5-mile-long Stayton Ditch; (3) the existing 24-foot-long by 12-foot-high intake structure equipped with 24.6-foot-long by 12-foot-high and 3-inch bar spacing trashracks located just upstream of the powerhouse; (4) the existing 40-foot-long V-type spillway weir and integral powerhouse containing a single 600-kilowatt generating unit; (5) the existing 24-foot-long by 12-foot-high outlet structure located just downstream of the powerhouse; (6) the existing 0.5-mile-long tailrace channel and tailrace fish barrier; (7) the existing 100-foot-long, 2,400-kilovolt transmission line; and (8) appurtenant facilities. The project would have an average annual generation of 4,320 megawatt-hours.

Additional project facilities may include the existing: (1) Spill dam and fish ladder located on the North Channel of the Santiam River just upstream of the power canal headgate structure; and (2) the berm habitat channel located between the powerhouse and tailrace fish barrier.

m. *Pre-filing Consultation:* The tendering notice issued on August 7, 2007 stated our intent to use the consultation that has occurred on this project for the previous conduit exemption application supplemented with National Environmental Policy Act scoping as a means to conduct further consultation with resource agencies and interested entities. Therefore, we noted our intent to waive pre-filing consultation sections 4.38(a)–(g) which requires, among other things, holding a joint meeting and distributing and consulting on a draft exemption application.

In letters filed on August 10 and 17, 2007, the U.S. Department of the Interior and Oregon Water Resources Department, respectively, noted numerous omissions in the exemption application that were identified in 2005 but were not addressed, and recommended additional consultation to assist in developing a complete exemption application. Since we will be conducting scoping, additional consultation will be afforded. Therefore, we are waiving sections 4.38(a)–(g) of the pre-filing consultation regulations.

n. Scoping.

Commission staff are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on February 7, 2008. Copies of the application and SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of the SD may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659. A copy of the application is also available for inspection and reproduction at the

address in item h above. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Commission staff intend to prepare a single Environmental Assessment (EA) for the Stayton Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

p. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2723 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–452]

South Carolina Electric and Gas; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

February 7, 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.:* 516–452.

c. *Date Filed:* January 17, 2008.

d. *Applicant:* South Carolina Electric & Gas Company (SCE&G).

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* The Saluda Hydroelectric Project is located in Lexington County, near Columbia, South Carolina. The 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. James M. Landreth, SCE&G; Mail Code: K61, Columbia, South Carolina 29218.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502–6175, or e-mail address: *Brian.Romanek@ferc.gov.*

j. *Deadline for Filing Comments, Motions To Intervene, and Protest:* March 7, 2008.

k. *Description of Request:* SCE&G has requested Commission authorization to issue a permit to Lighthouse Developments, Inc. to use project lands and waters (Lake Murray) for a community marina that would accommodate 84 watercraft. The marina would include a launch ramp and parking lot. The marina would not include fuel-dispensing equipment, electric service, or pump-out equipment.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov;* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–2728 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1330–000, ER07–1330–001, ER07–1330–002]

Twin Cities Hydro LLC; Notice of Issuance of Order

February 7, 2008.

Twin Cities Hydro LLC (Twin Cities) filed an application for market-based rate authority, with an accompanying

tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Twin Cities also requested waivers of various Commission regulations. In particular, Twin Cities requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Twin Cities.

On February 7, 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 Twin Cities, 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 (2004). The Commission encourages the electronic submission of protests using the FERC Online link at *http://www.ferc.gov.*

Notice is hereby given that the deadline for filing protests is March 10, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Twin Cities 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 Twin Cities, 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 Twin Cities' 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 C.F.R. 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. E8–2719 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1984–153]

Wisconsin River Power Company; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

February 7, 2008.

Take notice that the following hydroelectric 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:* 1984–153.

c. *Date Filed:* January 15, 2008.

d. *Applicant:* Wisconsin River Power Company.

e. *Name of Project:* Petenwell Castle Rock Hydroelectric Project.

f. *Location:* The proposed development is located on the Little Yellow River South, a tributary to the Wisconsin River, in Juneau County, Wisconsin. This project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Shawn Puzen, Wisconsin River Power Company, P.O. Box 19002, Green Bay, WI 54307–9001, (920) 433–1094.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674.

j. *Deadline for filing comments and or motions:* March 07, 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–1984–153) 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:* The licensee has requested Commission authorization to permit Hidden Bay, LLC to improve the 15th Avenue boat landing. Proposed improvements include replacing the existing ramp with 12-foot-wide concrete planks; constructing a turn-around; and installing a 6-foot-wide handicap-accessible pier, a parking lot, and a 6-foot-wide gravel trail along the west side of 15th Avenue from the parking lot to the boat launch. The parking lot would be constructed on private property and be deeded to the Town of Germantown upon completion, assuring that it will remain open to the general public. The improvements would serve the general public, and the residents of a private subdivision developed by Hidden Bay on property adjacent to the project.

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, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. 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. E8–2725 Filed 2–13–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8529–6]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 0318.11; Clean Watersheds Needs Survey (Renewal); was approved 01/17/2008; OMB Number 2040–0050; expires 01/31/2011.

EPA ICR Number 2250.01; Information Collection in Support of EPA's Stewardship Program for Nanoscale Materials; was approved 01/18/2008; OMB Number 2070–0170; expires 01/31/2011.

EPA ICR Number 0143.10; Recordkeeping Requirements for Producers of Pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (Renewal); in 40 CFR part 169; was approved 01/24/2008; OMB Number 2070–0028; expires 01/31/2011.

EPA ICR Number 1808.05; Environmental Impact Assessment of Nongovernmental Activities in Antarctica (Renewal); in 40 CFR part 8; was approved 01/28/2008; OMB Number 2020–0007; expires 01/31/2011.

EPA ICR Number 1049.11; Notification of Episodic Releases of Oil and Hazardous Substances (Renewal); in 40 CFR part 110, 40 CFR part 117, and 40 CFR part 302; was approved 01/28/2008; OMB Number 2050–0046; expires 01/31/2011.

EPA ICR Number 1198.08; Chemical-Specific Rules, TSCA section 8(a) (Renewal); in 40 CFR part 704; was approved 01/28/2008; OMB Number 2070–0067; expires 01/31/2011.

EPA ICR Number 1564.07; NSPS for Small Industrial-Commercial-Institutional Steam Generating Units (Renewal); in 40 CFR part 60, subpart Dc; was approved 01/28/2008; OMB Number 2060–0202; expires 01/31/2011.

EPA ICR Number 1246.10; Reporting and Recordkeeping for Asbestos Abatement Worker Protection (Renewal); in 40 CFR part 763, subpart G; was approved 01/28/2008; OMB Number 2070–0072; expires 01/31/2011.

EPA ICR Number 0193.09; NESHAP for Beryllium (Renewal); in 40 CFR part 61, subpart C; was approved 01/28/2008; OMB Number 2060–0092; expires 01/31/2011.

EPA ICR Number 2226.03; Revisions to Standards of Performance for New Stationary Sources, and NESHAP for Source Categories (Direct Final Rule for Revisions to Consolidated Federal Air Rule); in 40 CFR part 65; was approved 01/29/2008; OMB Number 2060–0599; expires 01/31/2011.

EPA ICR Number 1053.09; NSPS for Electric Utility Steam Generating Units (Renewal); in 40 CFR part 60, subpart Da; was approved 01/30/2008; OMB Number 2060–0023; expires 01/31/2011.

EPA ICR Number 2047.02; Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements (Final Rule); was pre-approved 01/30/2008; OMB Number 2090–0030; expires 01/31/2011.

EPA ICR Number 1904.03; The Sun Wise School Program (Renewal); was approved 02/06/2008; OMB Number 2060–0439; expires 02/28/2011.

EPA ICR Number 2087.03; Concentrated Aquatic Animal Production Effluent Guidelines (Renewal); in 40 CFR part 451, sections 3, 11(d) and 21(g); was approved 02/06/2008; OMB Number 2040–0258; expires 02/28/2011.

EPA ICR Number 1427.08; NPDES Compliance Assessment/Certification Information (Renewal); in 40 CFR 122.41, 40 CFR 122.44, 40 CFR 122.45, 40 CFR 122.47, 40 CFR 123.25, 40 CFR 155.41, 40 CFR 413.03, 40 CFR 423.12, 40 CFR 423.13, 40 CFR 423.15, 40 CFR 430, 40 CFR 431.14, 40 CFR 431.15, 40 CFR 431.16, 40 CFR 431.17, 40 CFR 433.12, 40 CFR 434, 40 CFR 435, 40 CFR 439, 40 CFR 455.42, 40 CFR 455.43, 40 CFR 455.44, 40 CFR 455.45, 40 CFR 465.03, 40 CFR 466.03, 40 CFR 467.03, 40 CFR 469.13, 40 CFR 501.15; was approved 02/06/2008; OMB Number 2040–0110; expires 02/28/2011.

EPA ICR Number 1959.03; National Listing of Fish Advisories (Renewal); was approved 02/06/2008; OMB Number 2040–0226; expires 02/28/2011.

EPA ICR Number 1287.09; Questionnaire for Nominees for the Annual National Clean Water Excellence Awards Program (Renewal); in 40 CFR part 105; was approved 02/06/2008; OMB Number 2040–0101; expires 02/28/2011.

EPA ICR Number 2103.03; Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety (Renewal); was approved 02/06/2008; OMB Number 2040–0253; expires 02/28/2011.

Short Term Extension

EPA ICR Number 1230.07; Prevention of Significant Deterioration Non-Attainment Area new Sources Review; on 01/31/2008; was granted an extension of the expiration date to 04/30/2008.

Withdrawn

EPA ICR Number 2214.01; Chlorine and Chlorinated Hydrocarbon Manufacturing Segment Questionnaire was withdrawn by the Agency on 01/17/2008.

Dated: February 7, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–2780 Filed 2–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0118; FRL–8529–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Title of ICR; EPA ICR No. 2292.01, OMB Control No. 2060–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44

U.S.C. 3501 *et seq*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0118, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (734) 214–4939.
- *Mail:* Percent High Evaporative Emitters in Fleet, Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0118. 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* 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 *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.*

FOR FURTHER INFORMATION CONTACT: Constance Hart, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4340; fax number: (734) 214–4939; e-mail address: *hart.connie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments:

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR–2008–0118, which is available for online viewing at *http://www.regulation.gov*, or in person viewing at the OTAQ Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Air and Radiation Docket is (202) 566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'', then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–OAR–2008–0118.

Affected entities: Entities potentially affected by this action are individual owners of light duty passenger cars and trucks.

Title: Determine Percentage of High Evaporative Emission Vehicles in On-road Fleet of Motor Vehicle Passenger Cars and Light Trucks

ICR numbers: EPA ICR No. 2292.01, OMB Control No. 2060–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control

number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The purpose of this study is to investigate the fractions of passenger cars and light trucks in the on-road fleet that have atypically high emissions of evaporative hydrocarbons. In past and current programs, vehicles with high evaporative emissions have been measured in the laboratory. In some cases, high emissions represented the state of the vehicle in use, and in others, high emissions were induced for experimental purposes. However, a critical data gap in the utilization of these data is reasonably accurate estimates for the prevalence of high emitting vehicles in the fleet. In addressing this need, the results of this study will be used to improve the accuracy of evaporative emission inventories for EPA's planning and regulations as well as for States in analyses supporting compliance with the Clean Air Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.0 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 4350.

Frequency of response: One time for 95%, twice for 5%.

Estimated total average number of responses for each respondent: 2.88.

Estimated total annual burden hours: 3785.

Estimated total annual costs: $111,934. This includes an estimated burden cost of $111,934 and an estimated cost of $0 for capital investment or maintenance and operational costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 7, 2008.

Chester France,

Assessment and Standards Division.

[FR Doc. E8–2782 Filed 2–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0082, FRL–8529–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA's Natural Gas STAR Program (Renewal); EPA ICR No. 1736.05, OMB Control Number 2060–0328

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 17, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0082, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Suzie Waltzer, Office of Atmospheric Program, Climate Change Division, 6207J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9544; fax number: 202–343–2202; e-mail address: *waltzer.suzanne@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 1, 2007, (72 *FR* 61875) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0082, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is

restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: EPA's Natural Gas STAR Program (Renewal).

ICR numbers: EPA ICR No. 1736.05, OMB control number 2060–0328.

ICR status: This ICR is currently scheduled to expire on March 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Natural Gas STAR is an EPA-sponsored, voluntary program that encourages natural gas companies to adopt cost effective methods for reducing methane emissions. Natural Gas STAR Partners agree to implement cost-effective technologies and practices to reduce methane emissions, which will save participants money and improve environmental quality. EPA needs to collect information to establish program participation and to obtain general information on new Natural Gas STAR Partners. EPA also uses the information collection to evaluate a Partner's progress and performance, assess overall program results, and develop technical guidance documents for the benefit of the industry. Information collection is accomplished through the use of an annual reporting process that allows companies to report their accomplishments in either a traditional hard-copy format or electronically. Participation in Natural Gas STAR is voluntary. Natural Gas STAR Partners may designate information submitted under this ICR as confidential business information. EPA will treat all such information as confidential business information and will not make the company or agency-specific information collected under this ICR available to the general public.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5,610 hours (24.2 hours per response). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The processing, production, transmission, and distribution sectors of the natural gas industry.

Estimated Number of Respondents: 155.

Average Frequency of Response: Yearly.

Estimated Total Annual Hour Burden: 5,610.

Estimated Total Annual Cost: $550,677 (includes $696 in capitalized O&M costs).

Changes in the Estimates: The overall annual reporting burden for respondents has increased from 4,705 hours in the previous ICR to 5,610 hours in the current ICR as a result of an increase in the number of Partners in the Natural Gas STAR program. Despite this increase, the average burden per partner has decreased from 40.6 hours per Partner to 36.2 hours per Partner. This decrease can be attributed to a larger percentage of Partners using the on-line Annual Report forms, and the availability of new materials on the Natural Gas STAR Web site. Fifty-eight percent of reporting partners used the on-line system in 2004 while 65% of reporting partners used the on-line system in 2007. Partners reported a subsequent decreased burden of 15% for this activity. The hourly burden estimates for data collection remained the same per Partner because the information requested and the collection methodology did not change.

Dated: February 7, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–2783 Filed 2–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0320; FRL–8529–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Application and Summary Report for an Emergency Exemption for Pesticides; EPA ICR No. 0596.09, OMB Control No. 2070–0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501, *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before March 17, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OPP 2007–0032, to (1) EPA online using *www.regulations.gov* (our preferred method), by mail Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cameo Gianne Smoot, Field and External Affairs Division, 7506P, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–5454; fax number: 703–308–5884; e-mail address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 4, 2007 (72 FR 30794), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPP–2007–0320, which is available

for online viewing at *www.regulations.gov*, or in person viewing at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

Use EPA's electronic docket and comment system at *www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Application and Summary Report for an Emergency Exemption for Pesticides.

ICR numbers: EPA ICR No. 0596.09, OMB Control No. 2070–0032.

ICR Status: This ICR is scheduled to expire on February 29, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes the Environmental Protection Agency (EPA) to grant emergency exemptions to states and Federal agencies to allow an unregistered use of a pesticide for a limited time if EPA determines that emergency conditions exist. A Section 18 action arises when growers and others encounter a pest problem on a site for which there is either no registered pesticide available, or for which there is a registered pesticide that would be effective but is not yet approved for use on that particular site. Section 18 also allows states to submit requests to EPA to grant unregistered pesticide use exemptions for public health and quarantine reasons. Responses to this collection of information are mandatory.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 83 hours per application and 16 hours per summary report. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State Agency, U.S. Territory, or Federal Agency.

Estimated No. of Respondents: 60.

Frequency of Collection: On occasion.

Estimated Total Annual Hour Burden: 49,500 hours.

Estimated Total Annual Labor Costs: $2,472,770.

Changes in Burden Estimates: There is no change in the 49,500 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Dated: February 7, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–2784 Filed 2–13–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8528–9]

Revised Renewable Fuel Standard for 2008, Issued Pursuant to Section 211(o) of the Clean Air Act as Amended by the Energy Independence and Security Act of 2007

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 211(o) of the Clean Air Act (CAA or the Act), as amended by the Energy Independence and Security Act of 2007 (EISA), requires the Administrator of the Environmental Protection Agency (EPA) to annually determine a renewable fuel standard (RFS) which is applicable to refiners, importers and certain blenders of gasoline, and publish the standard in the **Federal Register**. On the basis of this standard, each obligated party determines the volume of renewable fuel that it must ensure is consumed as motor vehicle fuel. This standard is calculated as a percentage, by dividing the amount of renewable fuel that the Act requires to be blended into gasoline for a given year by the amount of gasoline expected to be used during that year, including certain adjustments specified by the Act. In this notice we are publishing an RFS 7.76% for 2008. This standard is intended to lead to the use of 9 billion gallons of renewable fuel in 2008, as required by amended section 211(o). This standard supersedes the 2008 RFS that EPA published on November 27, 2007, before enactment of the EISA.

FOR FURTHER INFORMATION CONTACT: Chris McKenna, Environmental Protection Agency, MC 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–343–9037; fax number: 202–343–2801; E-mail address: *mckenna.chris@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Calculation of 2008 RFS

A. Background

On November 27, 2007, EPA published a Notice in the **Federal Register** announcing a renewable fuel standard for 2008 of 4.66%. This standard was designed to result in the use of 5.4 billion gallons of renewable fuel in 2008, as required by CAA section 211(o) at the time EPA published the standard. On December 19, 2007, President Bush signed into law the Energy Independence and Security Act of 2007 (EISA), which, among other things, amended CAA section 211(o) to

require the use of 9.0 billion gallons of renewable fuel in 2008. Today's Notice announces the recalculated standard for 2008, based on the volume of renewable fuel that amended section 211(o) now requires.

In today's Notice we are using the calculational procedure set forth in the final rulemaking for the Renewable Fuel Standard Program, as we did in the November 27, 2007, Notice. The formula includes a variable representing the volume of renewable fuel required by section 211(o), and EPA is today using that formula with the renewable fuel volume for 2008 required by the EISA amendments to section 211(o) to recalculate the RFS for 2008. Since the RFS rule establishes clear legal criteria for deriving the standard (including specification of the formula used in today's Notice, and all data sources), EPA is simply applying facts to pre-established law in issuing the re-calculated final 2008 RFS. EPA is advising the regulated community of the revised standard through a **Federal Register** Notice, without prior notice and comment, in accordance with the Clean Air Act and EPA regulations.

The 2008 RFS is calculated by dividing the volume of renewable fuels required by CAA section 211(o) to be blended into gasoline in 2008, by the volume of gasoline projected by the Energy Information Administration (EIA) to be consumed in 2008 (including certain adjustments specified by the Act). The following equation from the final RFS Program regulations summarizes all of the variables that must be considered in the calculation.

$$\mathrm{RFStd_i} = 100 \times \frac{\mathrm{RFV_i} - \mathrm{Cell_i}}{(\mathrm{G_i} - \mathrm{R_i}) + (\mathrm{GS_i} - \mathrm{RS_i}) - \mathrm{GE_i}}$$

Where

$\mathrm{RFStd_i}$= Renewable Fuel Standard in year i, in percent.

$\mathrm{RFV_i}$=Annual volume of renewable fuels required by section 211(o)(2)(B) of the Act for year i, in gallons.

$\mathrm{G_i}$=Amount of gasoline projected to be used in the 48 contiguous states, in year i, in gallons.

$\mathrm{R_i}$=Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states, in year i, in gallons.

$\mathrm{GS_i}$= Amount of gasoline projected to be used in Alaska, Hawaii, or a U.S. territory in year i if the state or territory opts-in, in gallons.

$\mathrm{RS_i}$= Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska, Hawaii, or a U.S. territory in year i if the state or territory opts-in, in gallons.

$\mathrm{GE_i}$= Amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons (through 2010 only unless exemption extended under §§211(o)(9)(A)(ii) or (B)).

$\mathrm{Cell_i}$= Beginning in 2013, amount of renewable fuel that is required to come from cellulosic sources, in year i, in gallons (250,000,000 gallons minimum).

EISA section 210(a)(1) also states that, ''For calendar year 2008, transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), that is produced from facilities that commence construction after the date of enactment of this Act shall be treated as renewable fuel within the meaning of section 211(o) of the Clean Air Act only if it achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.'' EISA further provides that for 2008 and 2009, any ethanol plant that is fired with natural gas, biomass or any combination thereof is deemed to be in compliance with the 20 percent lifecycle greenhouse gas reduction requirement. Based on the text of this section, which is not an amendment to section 211(o) of the CAA and is not covered by the rulemaking provision in EISA section 202(a)(1) (amending section 211(o)(2)(A)(i)), EPA believes that these 2008 requirements are self-implementing, and therefore immediately effective. EPA intends to address the meaning of the term ''commence construction'', and also address what transportation fuels other than ethanol from a facility fired by natural gas, biomass or some combination of the two satisfy the 20 percent lifecycle greenhouse gas reduction requirement, in the context of a proposed rule designed to implement the EISA amendments to the RFS program. EPA further notes, however, that is unlikely that any facilities for the production of transportation fuel that commence construction following enactment of EISA will be operational during 2008. Therefore, the 20 percent lifecycle greenhouse gas reduction requirement is unlikely to have a real-world impact for 2008.

While EISA requires a substantial change in the 2008 RFS, we believe that the required renewable production capacity will come on line this year. In addition, at current oil prices, we would expect it to be economic to use the volume of renewable fuel required by EISA for 2008. We also believe RINS generated in excess of the 2007 RFS can be applied to the 2008 RFS to provide additional flexibility to the fuel supply market. However, we recognize that in the short term there may be some catching-up required for the distribution infrastructure to deliver the required volume of renewable fuel.

B. Data Sources for 2008 RFS Calculation

The following discussion describes the sources of data for the variables in the above equation. For ease of calculation, this discussion regroups the terms $(G_i - R_i) + (GS_i - RS_i)$ in the denominator of the above equation into the terms $(G_i + GS_i) - (R_i + RS_i)$.

Calculation of $(RFV_i - Cell_i)$, Total Amount of Renewable Fuels From Non-Cellulosic Sources That Must Be Blended Into Gasoline in 2008

The EISA amended CAA section 211(o) to require 9.0 billion gallons of renewable fuels to be blended into gasoline in 2008. Since the amended CAA section 211(o) does not include a cellulosic volume requirement until 2013, the amount of renewable fuel required to be produced from cellulosic sources in 2008 ($Cell_i$) remains, zero. Thus the total amount of renewable fuels from non-cellulosic sources that must be blended into gasoline in 2008 is 9.0 billion gallons.

Calculation of $(G_i + GS_i)$, total amount of gasoline projected to be used in the 48 contiguous states plus opt-in states/territories, in year i, in gallons

CAA section 211(o) requires the Administrator of the EIA by October 31 of each year to provide EPA with an estimate of the volumes of gasoline projected to be sold or introduced into commerce in the United States for the following year. During the development of the RFS Program, EIA informed EPA that the projected gasoline consumption in ''Table 4a: U.S. Petroleum Supply, Consumption, and Inventories'' (formerly ''Table 5a. U.S. Petroleum Supply and Demand: Base Case'') of the October issue of the monthly *Short-Term Energy Outlook* (STEO) should be

used to calculate the RFS for the coming year. The October 2007 STEO projects that an average of 9.42 million barrels/day of gasoline will be consumed in all of the United States in 2008. Multiplying this average consumption rate by 366 days (2008 is a leap year) produces a total consumption of 144.80 billion gallons of gasoline in 2008.

Only one non-contiguous state or territory has petitioned EPA to opt into the RFS Program beginning in 2008. Hawaii petitioned EPA on June 22, 2007 to opt into the RFS program, and EPA approved their request.[1] Thus, Alaska is the only one of the 50 states that is not included in the RFS Program.

In order to calculate gasoline consumption in the 48 contiguous states plus Hawaii, we subtracted Alaska's projected gasoline consumption from the projected nationwide gasoline consumption of 144.80 billion gallons. Alaska's projected gasoline consumption was calculated by multiplying the projected nationwide gasoline consumption in 2008 by the ratio of Alaska's gasoline consumption in 2006 to the total U.S. consumption in 2006, based on Table 48, ''Prime Supplier Sales Volumes of Motor Gasoline by Grade Formulation, PAD District, and State'' gasoline data from EIA's *Petroleum Marketing Annual 2006* (the final rulemaking used data from *Petroleum Marketing Annual 2005*). According to EIA, Prime Supplier data reflects where gasoline is used, rather than where it is produced.[2] Alaska's projected gasoline consumption in 2008 is 0.30 billion gallons. Subtracting this consumption from the projected nationwide consumption of 144.80 billion gallons in 2008 produces a total consumption of 144.50 billion gallons of gasoline in 2008 in the 48 contiguous states plus Hawaii.

Calculation of ($R_i + RS_i$, total amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states plus opt-in states/territories, in year i, in gallons

The projected gasoline consumption in the October 2007 STEO includes renewable fuel that is blended into gasoline. This volume of renewable fuel must be subtracted from the total volume of gasoline in order to calculate the total consumption of non-renewable gasoline. In Table 8 of the October 2007 STEO, EIA estimates that 0.755 quadrillion Btu of ethanol will be used as transportation fuel in all of the United States in 2008. Dividing this energy usage by the high heating value of ethanol (3.539 million Btu/barrel), and multiplying by 42 gallons/barrel produces a total ethanol usage of 8.96 billion gallons nationwide in 2008.

Since Hawaii has opted in, but Alaska has not opted in, to the RFS program for 2008, Alaska's renewable fuels consumption must be subtracted from the nationwide renewable fuels consumption to calculate renewable consumption in the 48 contiguous states plus Hawaii. In Chapter 2 of the Regulatory Impact analysis for the RFS program rulemaking, EPA estimated that ethanol consumption in Alaska would be negligible prior to 2012. Thus, we project renewable fuels consumption in the 48 contiguous states plus Hawaii to be 8.96 billion gallons in 2008.[3] For purposes of recalculating the 2008 RFS, we will round this value to 9.0 billion gallons, which is equivalent to the volume of renewable fuel required by amended section 211(o) for 2008.

Calculation of GE_i, amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons[4]

In the final rulemaking establishing the RFS program regulations, we stated that we would estimate the combined small refinery and small refiner gasoline volume using a constant percentage of national consumption. Using information from gasoline batch reports submitted to EPA, EIA data and input from the California Air Resources Board regarding California small refiners, we estimated this percentage to be 13.5%.[5]

Multiplying the projected nationwide consumption of gasoline in 2008 (144.80 billion gallons) by 13.5% results in a total projected production of 19.55 billion gallons of gasoline from small refiners and small refineries in 2008.

Calculation of $RFStd_i$, renewable fuel standard in year i, in percent

Substituting all of the terms calculated above into the equation for $RFStd_i$ results in the following RFS for 2008,

$$RFStd_i = 100 \times \frac{9.0}{144.50 - 9.0 - 19.55} = 7.762\%$$

Therefore, the RFS for 2008 is 7.76%. This is the standard referenced in 40 CFR 80.1105(b) through (d) and which obligated parties apply to determine their renewable volume obligation under 40 CFR 80.1107. This recalculated 2008 RFS supersedes, and therefore replaces for all purposes, the 2008 standard published by EPA on November 27, 2007.

Dated: February 7, 2008.

Stephen L. Johnson,

Administrator.

[FR Doc. 08–679 Filed 2–13–08; 8:45 am]

BILLING CODE 6560-50-M

[1] Letter to the Honorable Linda Lingle, Governor of Hawaii, from Stephen Johnson of EPA dated July 30, 2007.

[2] Energy Information Administration, *Petroleum Marketing Annual 2006,* Explanatory Notes, Relationship of Refiner and Prime Supplier Sales Volumes'' (p. 382).

[3] Table 2.2–21 ''2012 Forecasted Ethanol Consumption by State,'' Regulatory Impact Analysis: Renewable Fuel Standard Program, April 2007.

[4] Through 2010 only, unless the exemption is extended under 211(o)(9)(A)(ii) or (B) of the Act.

[5] ''Calculation of the Small Refiner/Small Refinery Fraction for the Renewable Fuel Program,'' memo to the docket from Christine Brunner, ASD, OTAQ, EPA, September 2006.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, February 19, 2008, 10:30 a.m. eastern time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Obligation of Funds for a Temporary Interactive Voice Response (IVR) Non-competitive Housing Contract, a Non-competitive Extension of Software Licenses and a Competitive Contract for Technology Support of Customer Response Function.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the

Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: February 12, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. 08–703 Filed 2–12–08; 12:19 pm]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 24, 2008.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

FOR FURTHER INFORMATION CONTACT: Thomas Butler, Federal Communications Commission, (202) 418–1492 or via the Internet at *Thomas.butler@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0804.

OMB Approval Date: 1/17/2008.

Expiration Date: 7/31/2008.

Title: Universal Service—Rural Health Care Program/Rural Health Care Pilot Program.

Form Number(s): FCC Forms 465, 466, 466–A, and 467.

Estimated Annual Burden: 6,494 respondents; 59,464 responses; 68,420 total annual hours; 0.10–20 hours per response.

Needs and Uses: In the Telecommunications Act of 1996 (1996 Act), Congress specifically intended that rural health care providers be provided with ''an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services.'' In 1997, the Commission implemented this statutory directive by adopting the current Rural Health Care support mechanism, which provides universal service support to ensure that rural health care providers pay no more than their urban counterparts for their telecommunications needs and Internet access in the provision of health care services. Despite the Commission's efforts to increase the utility of the Rural Health Care support mechanism, the program has yet to fully achieve the benefits intended by the statute and the Commission. In particular, health care providers continue to lack access to the broadband facilities needed to support the types of advanced telehealth applications, like telemedicine, that are vital to bringing medical expertise and the advantages of modern health technology to rural areas of the Nation. In response, the Commission issued the *2007 Rural Health Care Pilot Program Selection Order* (WC Docket No. 02–60; *FCC 07–198*) which selected 69 participants for the universal service Rural Health Care Pilot Program (which was originally established by the Commission in September 2006). These 69 participants represent 42 states and 3 U.S. territories and will be eligible for approximately $417 million in universal service support over three years (or $139 million per funding year) to: (1) Support up to 85 percent of the costs associated with the construction of state or regional broadband health care networks and with the advanced telecommunications and information services provided over those networks; and (2) support up to 85 percent of the costs of connecting to Internet2 or National LambdaRail, which are both dedicated nationwide backbones, or to the public Internet. To minimize the burden on Pilot Program participants and to streamline the process, the Commission generally uses the same forms as the existing Rural Health Care support mechanism. For example, Selected Participants, in order to receive support, must submit an FCC Form 465 (seeking bids), FCC 466–A (selection of service provider), and FCC Form 467 (notification of service initiation). Due to the unique structure of the Pilot Program, however, in the *2007 Rural Health Care Pilot Program Selection Order,* the Commission provides guidance regarding how these forms should be completed and additional information is required from Selected Participants, including, proposed network costs worksheets, certifications, letters of agency from each participating health care provider, invoices showing actual incurred costs, and, if applicable, network design studies.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–2365 Filed 2–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 8, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before April 14, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Jerry

Cowden at (202) 418–0447 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0434.

Title: 47 CFR 90.20(e)(6), Stolen Vehicle Recovery System Requirements.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 20 respondents; 20 responses.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain a benefit.

Total Annual Burden: 80 hours.

Total Annual Cost: $3,600.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality for this information collection.

Needs and Uses: The frequency 173.075 MHz is available for stolen vehicle recovery systems on a shared basis with Federal stations in the fixed and mobile services. Stolen vehicle recovery systems are limited to recovering stolen vehicles and are not authorized for general purpose vehicle tracking or monitoring. Applications for base stations operating on the 173.075 MHz frequency band shall require coordination with the Federal Government. Applicants shall perform an analysis for each base station located within 169 km (105 miles) of a TV channel 7 transmitter of potential interference to TV channel 7 viewers. Applicants will have to certify to certain requirements set forth in 47 CFR 90.20(e)(6). Commission personnel use the data to determine the interference potential of the proposed operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–2665 Filed 2–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

February 6, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 17, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0652.

Title: Section 76.309, Customer Service Obligations; Section 76.1602; Customer Service—General Information; Section 76.1603, Customer Service—Rate and Service Changes—General Information, and Section 76.1619, Information on Subscriber Bills.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 8,260.

Estimated Time per Response: 10 minutes to 1 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 29,235 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Needs and Uses: 47 CFR 76.309 and 47 CFR 76.1603 set forth various customer service obligations and notification requirements for changes in rates, programming services and channel positions.

47 CFR 76.1602(a) states that franchise authorities must provide affected cable operators 90 days written notice of its intent to enforce customer services standards.

47 CFR 76.1603(b) states that customers will be notified of any changes in rates, programming services or channel positions as soon as possible in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers 30 days in advance of any significant changes in the other information required by Section 76.1602.

47 CFR 76.1603(c) states that in addition to the requirement set forth in Section 76.1603(b) regarding advance notification to customers of any changes in rates, programming services or channel positions, cable systems shall give 30 days written notice to both subscribers and local franchising authorities before implementing any rate or service change. Such notice shall state the precise amount of any rate

change and briefly explain in readily understandable fashion the cause of the rate change (e.g. inflation, changes in external costs or the addition/deletion of channels). When the change involves the addition or deletion of channels, each channel added or deleted must be separately identified. Section 76.1602(c) requires cable operators to inform subscribers in writing of their right to file complaints about changes in cable programming service tier rates and services, and shall provide the address and phone number of the local franchising authority. 47 CFR 76.1619(b) states that in case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within 30 days. In addition, Section 76.1619 sets forth requirements for information on subscriber bills.

Federal communications commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–2805 Filed 2–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

February 6, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Pursuant to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before April 14, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0717.

Title: Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92–77, 47 CFR 64.703(a), 64.709, and 64.710.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 630 respondents.

Estimated Time per Response: 30 seconds to 50 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 475,728 hours.

Total Annual Cost: $216,150.

Obligation to Respond: Required to obtain or retain benefit.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information from individuals.

Privacy Impact Assessment: No impact.

Needs and Uses: Pursuant to 47 CFR 64.703(a), Operator Service Providers (OSPs) are required to disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate call, how to obtain rate quotations, including any applicable surcharges. 47 CFR 64.710 imposes similar requirements on OSPs to inmates at correctional institutions. 47 CFR 64.709 codifies the requirements for OSPs to file informational tariffs with the Commission. These rules help to ensure that consumers receive information necessary to determine what the charges associated with an OSP-assisted call will be, thereby enhancing informed consumer choice in the operator services marketplace.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–2807 Filed 2–13–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–60, FCC 07–198]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission selects participants for the universal service Rural Health Care (RHC) Pilot Program established by the Commission in the *2006 Pilot Program Order.* Sixty-nine of these applicants have demonstrated the overall qualifications consistent with the goals of the Pilot Program to stimulate deployment of the broadband infrastructure necessary to support innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Senior Deputy Chief; Elizabeth Valinoti McCarthy, Attorney; or Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, in WC Docket No. 02–60, released November 19, 2007. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Order,* the Commission selects participants for the universal service Rural Health Care (RHC) Pilot Program established by the Commission in the *2006 Pilot Program* Order, 71 FR 65517, November 8, 2006, pursuant to section 254(h)(2)(A) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (1996 Act). The initiation of the Pilot Program resulted in an overwhelmingly positive response from those entities the Commission intended to reach when it established the program last year—health care providers, particularly those operating

in rural areas. Exceeding even the Commission's own high expectations, the Commission received 81 applications representing approximately 6,800 health care facilities from 43 states and three United States territories. Sixty-nine of these applicants have demonstrated the overall qualifications consistent with the goals of the Pilot Program to stimulate deployment of the broadband infrastructure necessary to support innovative telehealth and, in particular, telemedicine services to those areas of the country where the need for those benefits is most acute.

2. Accordingly, selected participants will be eligible for universal service funding to support up to 85 percent of the costs associated with the construction of state or regional broadband health care networks and with the advanced telecommunications and information services provided over those networks. In addition, because of the large number of selected participants, the Commission modifies the Pilot Program so that selected participants may be eligible for funding for the appropriate share of their eligible two-year Pilot Program costs over a three-year period beginning in Funding Year 2007 and ending in Funding Year 2009. By spreading the two-year costs over a three-year commitment period, the Commission is able to increase the available support for selected participants from the amount established in the *2006 Pilot Program Order* to approximately $139 million in each funding year of the three-year Pilot Program. This will ensure that all qualifying applicants are able to participate in the Pilot Program and yet do so in an economically reasonable and fiscally responsible manner, well below the $400 million annual cap, and enable selected participants to have sufficient available support to achieve the goals and objectives demonstrated in their applications. For the reasons discussed below, the Commission also denies 12 applicants from participating in the Pilot Program because these applicants have not demonstrated they satisfy the overall criteria, principles, and objectives of the *2006 Pilot Program Order.*

3. In light of the many applications the Commission received seeking funding and the wide range of network and related components for which support is sought, the Commission further clarifies the facilities and services that are eligible and ineligible for support to ensure that the Pilot Program operates to facilitate the goals set forth in the *2006 Pilot Program Order.* For example, the Commission clarifies that eligible costs include the non-recurring costs for design, engineering, materials, and construction of fiber facilities and other broadband infrastructure; the non-recurring costs of engineering, furnishing, and installing network equipment; and the recurring and non-recurring costs of operating and maintaining the constructed network. The Commission also clarifies that ineligible costs include those costs not directly associated with network design, deployment, operations, and maintenance.

4. The Commission provides specific guidance to the selected participants regarding how to submit existing FCC Forms to the universal service Fund Administrator, the Universal Service Administrative Company (USAC). For example, selected participants, in order to receive universal service support, must submit with the required FCC Forms detailed network cost worksheets concerning their proposed network costs, certifications demonstrating universal service support will be used for its intended purposes, and letters of agency from each participating health care provider. In order to receive reimbursement, selected applicants must also submit, consistent with existing processes and requirements, detailed invoices showing actual incurred costs of project build-out and, if applicable, network design studies. The Commission also requires that selected participants' network build-outs be completed within five years of receiving an initial funding commitment letter (FCL). As discussed below, selected participants that fail to comply with the terms of this Order and with the USAC administrative processes will be prohibited from receiving support under the Pilot Program. The Commission also sets forth data reporting requirements for selected participants where participants must submit to USAC and to the Commission quarterly reports containing data on network build-out and use of Pilot Program funds. This information will inform the Commission of the cost-effectiveness and efficacy of the different state and regional networks funded by the Pilot Program and of whether support is being used in a manner consistent with section 254 of the 1996 Act, and the Commission's rules and orders.

5. The Commission also addresses various requests for waivers of Commission rules filed by applicants concerning participation in the Pilot Program. Among other things, the Commission denies waiver requests of the Commission's rule requiring that Pilot Program selected participants competitively bid their proposed network projects. In doing so, the Commission reaffirms that the competitive bidding process is an important safeguard for ensuring universal service funds are used wisely and efficiently by requiring the most cost effective service providers be selected by Pilot Program participants.

6. In addition, the Commission establishes an audit and oversight mechanism for the Pilot Program to guard against waste, fraud, and abuse, and to ensure that funds disbursed through the Pilot Program are used for appropriate purposes. In particular, each Pilot Program participant and service provider shall be subject to audit by the Commission's Office of Inspector General (OIG) and, if necessary, investigated by the OIG to determine compliance with the Pilot Program, Commission rules and orders, and section 254 of the 1996 Act. As discussed in greater detail below, because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or Commission rules and orders, such proceedings can reveal instances in which Pilot Program disbursement awards the Commission improperly distributed or used in a manner inconsistent with the Pilot Program. To the extent the Commission finds funds were not used properly, USAC or the Commission may recover such funds and the Commission may assess forfeitures or pursue other recourse.

7. Finally, selected participants shall coordinate the use of their health care networks with the Department of Health and Human Services (HHS) and, in particular, with its Centers for Disease Control and Prevention (CDC) in instances of national, regional, or local public health emergencies (*e.g.*, pandemics, bioterrorism). In such instances, where feasible, selected participants shall provide access to their supported networks to HHS, including CDC, and other public health officials. Similarly selected participants shall use Pilot Program funding in ways that are consistent with HHS' health information technology (IT) initiatives that ''provide leadership for the development and nationwide implementation of an interoperable health information technology infrastructure to improve the quality and efficiency of health care.'' Accordingly, where feasible, selected participants, as part of their Pilot Program network build-out projects shall: (1) Use health IT systems and products that meet interoperability standards recognized by the HHS Secretary; (2) use health IT products certified by the Certification

Commission for Healthcare Information Technology; (3) support the Nationwide Health Information Network (NHIN) architecture by coordinating their activities with the organizations performing NHIN trial implementations; (4) use resources available at HHS's Agency for Healthcare Research and Quality (AHRQ) National Resource Center for Health Information Technology; (5) educate themselves concerning the Pandemic and All Hazards Preparedness Act and coordinate with the HHS Assistant Secretary for Public Response as a resource for telehealth inventory and for the implementation of other preparedness and response initiatives; and (6) use resources available through CDC's Public Health Information Network (PHIN) to facilitate interoperability with public health organizations and networks.

II. Discussion

8. The *2006 Pilot Program Order* generated overwhelming interest from the health care community. The Commission received 81 applications representing approximately 6,800 health care providers. Of these, 69 applications covering 42 states and three United States territories demonstrate the overall qualifications consistent with the goals, objectives, and other criteria outlined in the *2006 Pilot Program Order* necessary to advance telehealth and telemedicine in their areas by: Describing strategies for aggregating the specific needs of health care providers within a state or region, including providers serving rural areas; providing strategies for leveraging existing technology to adopt the most efficient and cost effective means of connecting those providers; describing previous experience in developing and managing telemedicine programs; and detailing project management plans. Rather than limit participation to a select few among the 69 qualified applicants, the Commission finds that it would be in the best interests of the Pilot Program, and appropriate as a matter of universal service policy, to accommodate as many of these qualified applicants as possible. Moreover, having more participants will enable the Commission to collect more data and thus enhance the Commission's ability to critically evaluate the Pilot Program. To accommodate the 69 qualified applicants in an economically reasonable and fiscally responsible manner, including remaining well within the existing $400 million annual RHC program cap, the Commission modifies the Pilot Program to spread funding equally over a three-year period. Specifically, total available support for Year One of the Pilot Program (FY 2007 of the existing RHC Program), Year Two (FY 2008 of the existing RHC Program), and Year Three (FY 2009 of the existing RHC Program) of the Pilot Program will be approximately $139 million per funding year. With this modification, the Commission is thus able to select all of the 69 qualified applicants as eligible to participate in the Pilot Program. Finally, selected participants shall work with HHS and, in particular, CDC, to make the health care networks funded by the Pilot Program available for use in instances of nationwide, regional, or local public health emergencies (e.g., pandemics, bioterrorism). Selected participants shall also use funding in a manner consistent with HHS's health IT initiatives.

A. Overview of Applicants

9. Consistent with the Commission's goal in the *2006 Pilot Program Order* to learn from the health care community through the design of a bottom-up application process, selected participants proffered a wide array of proposals to construct new health care networks or to upgrade existing networks and network components in an efficient manner. The selected proposals range from small-scale, local networks to large-scale, statewide or multi-state networks. Examples of applicants proposing small-scale networks include Mountain States Health Alliance which seeks $54,400 to connect two rural Virginia hospitals to an existing network consisting of 11 Tennessee hospitals. Rural Healthcare Consortium of Alabama seeks $232,756 to connect four critical access hospitals in rural Alabama to enable teleradiology, lab information systems, video conferencing, and secure networking with academic medical centers and universities.

10. Other applicants propose networks much larger in scope. For instance, Tennessee Telehealth Network (TTN) seeks approximately $7.8 million to expand upon the existing Tennessee Information Infrastructure, a pre-existing broadband network serving state, local, and educational agencies in Tennessee. Upon completion of the project, TTN's network will reach more than 440 additional health care providers throughout the state enabling it to bring the benefits of innovative telehealth, such as access to specialists in urban areas, to rural sites. In addition, certain applicants plan to connect multi-state networks, such as New England Telehealth Consortium (NETC) which seeks approximately $25 million to connect 555 sites in Vermont, New Hampshire, and Maine to the Northern Crossroads network, enabling connectivity to hospitals and universities throughout New England, including Rhode Island, Massachusetts, and Connecticut. NETC's resulting network would facilitate expansive telemedicine benefits, including remote trauma consultations, throughout the multi-state region.

11. Numerous applicants also demonstrate the serious need to deploy broadband networks for telehealth and telemedicine services to the rural areas of the nation where the needs for these services are most acute. For example, Pacific Broadband Telehealth Demonstration Project seeks to connect Hawaii and 11 Pacific Islands to one broadband network in the region where transportation costs are extremely high and health care specialists are concentrated mainly in the region's urban centers such as Honolulu.

12. Similarly, Health Care Research & Education Network convincingly demonstrates its state's need for expanded telemedicine services: North Dakota is an extremely rural state where 42 of its 53 counties include 30 percent or more residents living at or below 200 percent of the Federal Poverty Level. Part or all of 83 percent of North Dakota's counties are designated as Health Professional Shortage Areas, and 94 percent are designated as mental health shortage areas. To help alleviate these hardships, the University seeks to construct a high-speed data network to connect, via the existing state fiber network, Stagenet, its medical school's four main campus sites and clinical medical sites to five rural North Dakota health care facilities. Doing so will allow for research which would greatly accelerate the ability to bring contemporary treatment options to rural areas.

13. The Wyoming Telehealth Network also demonstrates the need for broadband infrastructure for health care use. In its application, it explains that Wyoming is an extremely low populous and rural state, suffering from a severe shortage of health care providers. Wyoming ranks 45th in physicians per 100,000 people, and have only 18 psychiatrists, four certified psychological practitioners, and two school psychologists statewide. Wyoming Telehealth Network's proposed network will extend the reach of health care professionals by linking the entire state's 72 hospitals, community mental health centers, and substance abuse centers, which will enable these facilities to transmit data to one another and videoconference. As these and other applications

demonstrate, health care providers in rural areas need access to broadband facilities for telehealth and telemedicine services to be available in rural areas.

14. Some applicants request Pilot Program funding to support build-out to tribal lands. For example, Tohono O'odham Nation Department of Information Technology (Nation) seeks funding to connect three of the Nation's remote health care facilities to Internet2 and to Arizona health care providers with existing networks to facilitate implementation of a comprehensive telemedicine program for the Tohono O'odham Nation that will enable the Nation to connect into a nationwide backbone of networks. The Nation's planned dedicated broadband network will result in a comprehensive health care delivery system that reaches even its most remote geographic areas—a particularly important goal considering the Nation's extremely limited public transportation system.

15. The Commission finds that the selected participants demonstrate a viable strategy for effective utilization of Pilot Program support consistent with the principles established in the *2006 Pilot Program Order,* and sufficiently set forth how their networks will meet the detailed Pilot Program criteria set forth in the *2006 Pilot Program Order.* As discussed in detail below, while the Commission finds that the selected applications overall satisfy the criteria set forth in the *2006 Pilot Program Order,* many applicants must submit additional information to USAC to ensure that fund commitments and disbursements will be consistent with section 254 of the 1996 Act, this Order, and the Commission's rules and orders.

B. Scope of Pilot Program and Selected Participants

16. In the *2006 Pilot Program Order,* the Commission stated, ''[o]nce we have determined funding needs of the existing program, the Commission will fund the Pilot Program in an amount that does not exceed the difference between the amount committed under our existing program for the current year and $100 million.'' The Commission estimated that approximately $55–60 million would be available for the Pilot Program, based on its past experience and estimates of funding requests received under the existing program for Funding Year 2006. In the *2006 Pilot Program Order,* the Commission also established the Pilot Program as a two-year program.

17. *Funding Cap.* In light of the overwhelming need for the Pilot Program funding to build-out dedicated health care network capacity to support telehealth and telemedicine, the Commission increases the funding cap amount from that set in the *2006 Pilot Program Order* to approximately $139 million for each year of the Pilot Program. The Commission finds this modification necessary to enable the 69 qualified applicants to implement their plans to the fullest extent possible. In particular, the Commission believes this increased amount of Pilot Program funding will enable participants to fully realize the benefits to telehealth and telemedicine services by making universal service support available for significant build-out of dedicated broadband network capacity. Increased support will also provide the Commission with an RHC Pilot Program extensive enough to soundly evaluate and to serve as a basis to propose to modify the existing RHC support mechanism, all without requiring the Commission to reject otherwise compliant applications. Although available yearly Pilot Program support is higher than the Commission originally contemplated in the *2006 Pilot Program Order,* this amount is still well below the $400 million cap for each funding year of the existing RHC support mechanism (even when combined with the most recent disbursements under the existing RHC support mechanism of $41 million), and therefore remains well within the existing parameters of economic reasonability and fiscal responsibility.

18. *Duration of Pilot Program.* To continue to maintain fiscal discipline, the Commission modifies the duration of the Pilot Program to require that commitments for the two-year program costs identified by selected participants in their applications occur over a three-year period. Funding the selected applications over a three-year period at somewhat lower levels than requested based on a two-year program will better serve goals of section 254(h)(2)(A) of the 1996 Act because it provides the Commission with sufficient flexibility to support more expansive network build-outs, thereby significantly enhancing health care providers' access to broadband services and enabling such access to occur considerably quicker than it otherwise would. Spreading commitments over a three-year period will also ensure that the Program moves forward seamlessly to facilitate uninterrupted rural telehealth/telemedicine network build-outs, while balancing the need for economic reasonableness and responsible fiscal management of the program, including by staying well within the $400 million RHC mechanism cap. In addition, expansion of the Pilot Program's duration, as well as increasing available aggregate support, will provide greater certainty of support to applicants that requested funding for multiple years, and will obviate the need for reapplications during the duration of the Pilot Program. Accordingly, the Pilot Program will begin in Funding Year 2007 and end in Funding Year 2009 of the existing RHC support mechanism.

19. *Administration of Funding Year 2006 Funds.* In establishing the Pilot Program duration, the Commission applies to Funding Year 2007 the moneys that USAC already collected in Funding Year 2006 for the Pilot Program. Because the Commission did not receive approval from the OMB until March 8, 2007, only two months prior to the application deadline of May 7, 2007, and because applicants could not meet the June 30, 2007, deadline for submitting Funding Year 2006 forms to USAC, the Commission finds it impracticable to begin the Pilot Program in Funding Year 2006 as originally contemplated. Consequently, the Commission begins the USAC application, commitment, and disbursement process for the Pilot Program with Funding Year 2007. Total available support for Year One of the Pilot Program (Funding Year 2007 of the existing RHC support mechanism), Year Two (Funding Year 2008 of the existing RHC support mechanism), and Year Three (Funding Year 2009 of the existing RHC support mechanism) of the Pilot Program will be approximately $139 million per Pilot Program funding year. The funding total is capped by the maximum amount allowable funding for each applicant during the three-year period.

20. *Selected Participants.* Appendix B of this Order lists each selected participant's eligible support amounts for each Pilot Program funding year. As indicated in Appendix B, selected participants' available support for each funding year of the Pilot Program is one-third of the sum of their Year One and Year Two application funding requests, as calculated by the Commission. Calculations are based on 85 percent of each selected participant's funding request. For selected participants that did not clearly request 85 percent funding for their total costs, the Commission has adjusted the support level to the appropriate 85 percent level. The Commission finds that committing this funding over a three-year period ensures the Pilot Program remains economically reasonable and fiscally responsible while allowing selected participants to remain eligible to receive their entire eligible Funding Year One

and Year Two support as identified in their applications. Although the Commission increases available support amounts, as explained in greater detail below, selected participants may not exceed the available support for each funding year as listed in Appendix B. The selected participants also remain required to provide at least 15 percent of their network costs from other specified sources. In addition, the Commission requires that selected participants' network build-outs be completed within five years of receiving an initial funding commitment letter (FCL).

21. *Priority System.* Contrary to the Commission's findings in the *2006 Pilot Program Order,* the Commission also, on its own motion, modifies the Pilot Program structure by declining to establish a funding priority system similar to the priority system provided for in the universal service schools and libraries mechanism. In the *2006 Pilot Program Order,* the Commission found that applications for support under the existing rural health care program would be funded before funding any of the projects proposed in the Pilot Program. The Commission had limited funding for the Pilot Program to the difference between the amount committed to the existing rural health care program and $100 million. The Commission finds it is not necessary to establish a priority system for the rural health care program because the Commission has eliminated the $100 million cap on funding for the existing program and the Pilot Program. As such, the Commission's expansion of the Pilot Program will ensure that both the applicants under the existing program and those under the Pilot Program receive funding for all eligible expenses they have included in their applications.

C. Qualifications of Selected Participants

22. In the *2006 Pilot Program Order,* the Commission instructed applicants to indicate how they plan to fully utilize a broadband network to provide health care services and to present a strategy for aggregating the specific needs of health care providers within a state or region, including providers that serve rural areas. Overall, selected participants demonstrated significant need for RHC Pilot Program funding for health care broadband infrastructure and services for their identified health care facilities, and provided the Commission with sufficiently detailed proposals. In their applications, each selected participant explained the goals and objectives of their proposed networks and generally addressed other criteria on which the Commission sought information in the *2006 Pilot Program Order.* Selected participants must meet the goals and objectives they identified in their Pilot Program applications. In addition, each selected participant must comply with all Pilot Program administrative requirements discussed below to receive universal service support funding.

23. *Network Utilization.* In the *2006 Pilot Program Order,* the Commission set forth the network goals and objectives for applicants to meet to be considered for Pilot Program funding. In particular, the Commission requested that applicants indicate how they will utilize dedicated broadband capacity to provide health care services. Selected participants sufficiently set forth the various ways in which they would appropriately utilize a broadband network. For example, Virginia Acute Stroke Telehealth Project proposes a broadband network that would focus on the continuum of care (prevention through rehabilitation) for stroke patients in rural and underserved areas of Virginia. Illinois Rural HealthNet Consortium plans to use its network for a wide variety of telemedicine applications, including video conferencing, remote doctor-patient consultations, and tele-psychiatry. Pacific Broadband Telehealth Demonstration Project seeks to interconnect seven existing networks to link health care providers throughout Hawaii and the Pacific Island region. The network will enable delivery of broadband telehealth and telemedicine for clinical applications, continuing medical, nursing and public health education, and electronic health records support. Alaska Native Tribal Health Consortium plans to connect rural health care providers throughout Alaska to urban health centers *via* a network that will support teleradiology, electronic medical records, and telepsychiatry through video conferencing.

24. Based on the Commission's review of all 81 of the applications, the Commission finds that the 69 selected participants have shown that they intend to utilize dedicated health care network capacity consistent with the goals set forth in the *2006 Pilot Program Order.* Thus, in selecting these applicants as eligible to receive funding for broadband infrastructure and services, the Commission will advance the goals of, among other things, bringing the benefits of telehealth and telemedicine to areas where the need for these benefits is most acute; allowing patients to access critically needed specialists in a variety of practices; and enhancing the health care community's ability to provide a rapid and coordinated response in the event of a national health care crisis.

25. *Leveraging of Existing Technology.* In the *2006 Pilot Program Order,* the Commission stated that applicants should leverage existing technology to adopt the most efficient and cost effective means of connecting providers. The Commission explained that the Pilot Program would be ''technically feasible'' because it would not require development of any new technology, but rather would enable participants to utilize any currently available technology. In general, selected participants explained how their proposed networks would leverage existing technology. Examples of applicants leveraging existing technology include the Association of Washington Public Hospital Districts, which plans to create a ''network of networks'' by interconnecting six existing networks to create a state-wide network. And Colorado Health Care Connections proposes to leverage an existing state network as the basis for a dedicated health care network for Colorado's public and non-profit health care providers. The goal is to connect all 50 rural hospitals and 76 rural clinics to the state network, which in turn is connected to the major metropolitan tertiary hospitals, and Internet2 and National LambdaRail.

26. *Aggregation.* In the *2006 Pilot Program Order,* the Commission instructed applicants to provide strategies for aggregating the specific needs of health care providers, including providers that serve rural areas within a state or region. In general, selected participants sufficiently explained how their proposed networks would aggregate the needs of health care providers, including rural health care providers. For example, Palmetto State Providers Network plans to link large tertiary centers, academic medical centers, rural hospitals, community health centers, and rural office-based practices in four separate rural/underserved areas in South Carolina into a developing fiber optic statewide backbone which connects to Internet2, NLR, and the public Internet. Similarly, Iowa Rural Health Telecommunications Program plans to link 100 hospitals in 57 counties in Iowa, one Nebraska hospital, and two South Dakota hospitals to a broadband network which will: Facilitate timely diagnosis and initiation of appropriate treatment or transfer of patients in rural communities; facilitate rapid access to and transmission of diagnostic images

and patient information between hospitals; extend and improve terrorism and disaster preparedness and response through communication network interoperability between hospitals, the Iowa Department of Public Health, and Iowa Homeland Security and Emergency Management; and enable future remote monitoring and care coordination for intensive care patients.

27. *Creation of Statewide or Regional Health Care Networks and Connection to Dedicated Nationwide Backbone.* In the *2006 Pilot Program Order,* the Commission instructed applicants to submit proposals that would facilitate the creation of state or regional networks and (optionally) connect to a nationwide broadband network. These networks should be dedicated to health care, thereby connecting public and non-profit health care providers in rural and urban locations. The selected participants generally demonstrated how their proposals would result in new or expanded state or regional networks and connection to a nationwide broadband network dedicated to health care. For example, Wyoming Telehealth Network will connect more than 30 hospitals and 42 community health centers, providing consortium health care professionals with access to a statewide network, and facilitating connection to Internet2 or NLR. West Virginia Telehealth Alliance's proposed network will facilitate access in every region, health care market, and community in West Virginia, with particular focuses on medically underserved rural areas; health professional shortage areas; communities with high disease and chronic health condition disparities; and communities that demonstrate ''readiness for deployment.'' Southwest Alabama Mental Health Consortium plans to establish a broadband network connecting 34 mental health providers in 16 counties in Southwest Alabama, and this network will connect to Internet2 thereby creating a large regional mental health care network that has access to the national backbone.

28. *Tribal Lands.* A significant number of applicants plan to use Pilot Program funds to create or expand health care networks serving tribal lands. The Commission finds that network reach to tribal lands to be a positive use of Pilot Program funds; these areas traditionally have been underserved by health care facilities and reflect unique health care needs, particularly compared to non-tribal areas. In addition to inadequate access to health care, tribal lands suffer from relatively low levels of access to important telecommunications services. For example, Native American communities have the lowest reported levels of telephone subscribership in America.

29. The Commission finds that these health care and telecommunications disparities between tribal lands and other areas of the country underscore the serious need for Pilot Program support of telemedicine and teleheath networks in tribal areas. Many selected participants plan to use Pilot Program support for networks on or near tribal lands. For example, Health Care Research & Education Network plans to construct a network that will serve a significant Native American population. According to the Health Care Research & Education Network, Native Americans report being uninsured at a rate of 37.1 percent and North Dakota's Indian population is 1.5 times as likely to die of heart disease, cancer, stroke, and influenza/pneumonia as those living on non-tribal lands. The Network seeks to alleviate some of these disparities through use of its planned network that will provide a link to improve educational opportunities, and will facilitate new and ongoing research in health care delivery to rural areas.

30. In the first year of the Pilot Program, Western Carolina University (WCU) in collaboration with the Eastern Band of Cherokee Indians (EBCI) seeks to connect the WCU's health care facilities to health care facilities on the reservation and in outlying areas so that patients can access critically needed medical specialists in a variety of practices without leaving their homes or their communities. In year two of the Pilot Program, WCU plans to connect the United South and Eastern Tribes, Inc. (USET), a non-profit, inter-tribal organization of 24 federally recognized tribes, to its network. The Commission finds that these and the other planned uses of Pilot Program funds to support network build-out to tribal lands will further our goal of bringing innovative health care services to those areas of the country with the most acute health care needs.

31. *Cost Estimates.* In the *2006 Pilot Program Order,* the Commission requested that applicants provide estimates of their network's total costs for each year. Selected participants provided cost estimates or budgets. Several applicants provided significant cost and budget details, including Adirondack-Champlain Telemedicine Information Network whose budget includes a clear analysis of network costs with significant detail, including, *e.g.*, cost per foot of fiber, cost of a pole installation, number of feet of fiber, and number of poles where fiber is installed. Alaska Native Tribal Health Consortium provides detailed cost estimates for each phase of its network, including deployment and services, and provides significant information about its revenue stream, operating expenses, and maintenance for five years. Although the Commission finds selected participants have satisfied this criterion, to ensure support is used for eligible costs, as part of the USAC application process, applicants must submit detailed network cost worksheets.

32. *Fair Share.* To prevent improper distribution of Pilot Program funds, in the *2006 Pilot Program Order,* the Commission instructed applicants to describe how for-profit network participants will pay their fair share of the network and other costs. In general, selected participants provided significant assurances that for-profit participants will be responsible for all of their network costs. Several applicants provided more detailed plans targeted to insuring that all for-profit participants pay their fair share of the costs. For instance, Northeast HealthNet states that its proposed network does not include for-profit entities and that, if for-profit entities are added to its network, they would be invoiced separately for each service item and USAC would receive invoice documentation that reflects only eligible rural health care providers. Similarly, Tennessee Telehealth Network notes that although it will not include for-profit participants in the first two years, for-profits will later be allowed to join and will be required to pay 100 percent of their actual costs.

33. *Funding Source.* In the *2006 Pilot Program Order,* the Commission instructed applicants to identify their source of financial support and anticipated revenues that will pay for costs not covered by the fund. To preserve the integrity of the Pilot Program, the Commission will continue to require selected participants to indicate how for-profit participants pay their fare share of network costs. Accordingly, selected participants must submit this information to USAC as part of their detailed line-item network costs worksheet submission and Pilot Program Participants Quarterly Data Reports. Generally, selected participants identified their source or sources of support for costs not covered by the Pilot Program. Several applicants provided the well-documented assurances that their costs not supported by the Pilot Program will be funded by reliable sources. For example, University Health Systems of Eastern Carolina states that it, the participating health care providers, and the North Carolina Office of Rural Health will

provide funding for their network costs not supported by Pilot Program funds. And, Wyoming Telehealth Network has received a commitment from the Wyoming Department of Public Health and Terrorism Preparedness Program to fund the Network's costs not covered by the Program.

34. *85 Percent Funding.* The Commission also stated in the *2006 Pilot Program Order* that no more than 85 percent of their costs incurred by a participant will be funded to deploy a state or regional dedicated broadband health care network, and to connect that network to NLR or Internet2. Selected participants demonstrated their commitment to seeking no more than 85 percent of their network costs from the Pilot Program. Michigan Public Health Institute, for example, explains that the Michigan Legislature has appropriated funds to cover a portion of its 15 percent share of costs. California Telehealth Network stated that it will receive its 15 percent share from the California Emerging Technology Fund, which is operated by the California Public Utility Commission. Iowa Health System states that it plans to fund approximately 39 percent of the total cost of extending its existing fiber backbone to 78 rural sites.

35. *Included Facilities.* With respect to health care facilities, the Commission directed applicants in the *2006 Pilot Program Order:* (1) To list the health care facilities that will be included in their networks; and (2) to demonstrate that they will connect more than a *de minimis* number of rural health care providers in their networks. All selected participants satisfied this request by providing the names and details of facilities to be included and by proposing to connect more than a *de minimis* number of rural health care facilities. Although some proposals include only a few rural health care providers, relative to the total number of facilities to be included in these networks, and recognizing the significant benefits these networks will confer on their rural populations, the Commission finds these small numbers of rural health care providers are more than *de minimis* when viewed in context. For example, Erlanger Health System's proposed network in Tennessee and Georgia includes five rural health care providers out of a total of 11 facilities, and Puerto Rico Health Department's proposed network includes six rural health care providers out of a total of 52 facilities. Considering the total number of health care providers to be included in these proposed networks, the Commission finds that the number of rural health care providers is more than *de minimis*.

36. *Prior Experience.* To help ensure sufficient skill and competency of Pilot Program participants, in the *2006 Pilot Program Order* the Commission asked whether applicants had previous experience in developing and managing telemedicine programs, and specifically whether applicants had successful track records in developing, coordinating, and implementing telehealth/telemedicine programs within their states or regions. In general, selected participants exhibited experience with telehealth/telemedicine programs, and some exhibited significant, impressive experience in this area. Notably, University Health Systems of Eastern Carolina has been recognized as one of the nation's ''100 Most Wired Healthcare Organizations'' five of the previous six years by *Hospitals and Health Networks* magazine, and connects regional hospitals *via* a high-speed fiber-optic network enabling telemedicine, teleradiology and telehealth services. University of Mississippi Medical Center's TelEmergency program already provides real-time medical care to patients in rural emergency departments utilizing specially-trained nurse practitioners linked with their collaborating physicians. The Commission finds this experience, and the experiences cited in other applications, will further the goals of the *2006 Pilot Program Order* by ensuring that applicants have the necessary experience to successfully implement telemedicine/telehealth programs within their states or regions.

37. *Project Management.* To ensure proper network oversight and implementation, in the *2006 Pilot Program Order,* the Commission instructed applicants to provide project management plans which outline leadership and management structures, work plans, schedules, and budgets. Selected participants provided project management plans that demonstrate a strong commitment to the success of their proposed networks. For example, Southwest Alabama Mental Health Consortium sets forth a detailed management structure, budget, and schedule, and its work plan provides for: Establishment of a legal partnership; selection of a service provider based on Commission requirements; installation of WAN and connection to Internet2; monthly project assessment meetings; implementation of telehealth and telemedicine services; implementation evaluation; and project continuation to achieve goals and objectives. Missouri Telehealth Network describes in detail the program manager's responsibilities; provides a month-by-month project timeline; and lists specific funding amounts requested for network costs, equipment, connections, and operation.

38. *Coordination.* To ensure efficiencies and avoid duplication of efforts or network facilities, in the *2006 Pilot Program Order,* the Commission instructed applicants to indicate how their proposed telemedicine program will be coordinated throughout the state or region. In general, selected participants sufficiently described such coordination. Notably, New England Telehealth Consortium (NETC) members represent 57 hospitals, three universities, 57 behavioral health sites, eight correctional facilities' clinics, 81 federally qualified health care centers, six health education sites, and two health research sites throughout Maine, Vermont and New Hampshire. Each NETC member, through its representation on the NETC Board of Directors, will be able to provide input into critical NETC decisions including network implementation priority among the various sites and telemedicine programs implemented as a result of this network. According to NETC, all members have agreed in writing that an Executive Committee will facilitate efficient management of the organization between meetings of the full Board. Rural Nebraska Healthcare Network (RNHN), a non-profit membership organization consisting of nine local hospitals and their associated clinics in the Panhandle of Nebraska, has coordinated health care efforts in the Panhandle since 1996. RNHN plans to utilize and enhance its existing regional coordination for programs and services by employing a system of Regional Leadership Teams that will draft regional priorities and be responsible for communication between all participants. The Regional Leadership Teams also will coordinate with the Board of Directors which includes the Chief Executive Officer of each member hospital.

39. *Self Sustainability.* A primary goal of the Pilot Program is to ensure the long-term success of rural health care networks and to prevent wasteful allocation of limited universal service funds. Accordingly, in the *2006 Pilot Program Order,* the Commission sought assurances from applicants that their proposed networks will be self sustaining once established. To the extent a network is not self sustainable once established, that may be an indicia of non-compliance with the terms of this Order and may be considered as part of any Pilot Program audits and oversight. Generally, selected participants provided sufficient evidence that their proposed networks

will be self sustaining by the completion of the Pilot Program. For example, Heartland Unified Broadband Network identifies three possible scenarios for network sustainability for Year Three and beyond, including: Reliance on the existing RHC support mechanism; reliance on fees from network partners; and reduction (not elimination) of bandwidth should full funding be unavailable. Wyoming Telehealth Network envisions some ongoing costs covered by the existing RHC support mechanism or state funding, and plans to use as a model Nebraska's statewide telehealth network which is supported through a combination of existing RHC support mechanisms, state funding through the Nebraska universal service program, and minimal consortium fees.

40. *USAC Application Process.* As described in detail above, the Commission finds that selected participants have sufficiently set forth how they will meet the overall Pilot Program's goals and objectives, and how their networks will meet the detailed Program criteria set forth in the *2006 Pilot Program Order.* Although the Commission finds that the selected applications overall satisfy the criteria set forth in the *2006 Pilot Program Order,* additional information will be needed from many applicants to ensure funds are disbursed and used consistent with section 254 of the 1996 Act, this Order, and the Commission's rules and orders. Accordingly, as described more fully below, each selected participant will be required to comply with this Order, and to thoroughly and clearly provide all necessary information with its forms and other data through the USAC administrative process. These additional requirements will ensure that Pilot Program funds are appropriately disbursed and will prevent, to the extent possible, waste, fraud, and abuse.

D. Denied Applications

41. In this section, the Commission denies 12 applications because these applicants do not demonstrate that they overall satisfy the goals, objectives, and other criteria of the *2006 Pilot Program Order.* Unlike the applications selected for participation above, the 12 applications the Commission denies either have substantial deficiencies across the range of criteria established in the *2006 Pilot Program Order* or seek funding for costs that are well beyond the scope of the *2006 Pilot Program Order.* Accordingly, the Commission finds that these applications do not warrant further participation in the Rural Health Care Pilot Program.

42. *OpenCape Corporation Application.* OpenCape fails to satisfy the goals and objectives of the *2006 Pilot Program Order* because, among other things, its application seeks support focused not for a network dedicated to telehealth, but instead for a network for use by public schools, community colleges, and commercial firms. In fact, in the application, health care is only mentioned once and the letters of support and funding in the OpenCape application appear to be limited to school districts, community colleges, and the towns that would be served by the network. To the extent OpenCape seeks funding for schools, it may do so through the universal service support mechanism for schools and libraries (E-Rate program). Significantly, none of the seven members of the proposed board is affiliated with a health care provider; none of the 41 entities listed as supporting the network is a health care provider; and none of the six entities providing funds to cover the 15 percent minimum funding contribution is a health care provider. The seven board members primarily come from education backgrounds. OpenCape's application is also deficient because it fails to provide adequate details of its costs. For example, the budget provided with OpenCape's application provides information on tasks it will perform, but does not provide costs associated with those tasks. For instance, OpenCape states that it will perform a wireless engineering study and a topography study, but does not provide the costs associated with these studies. In addition, OpenCape does not adequately identify its source of the financial support and anticipated revenues that will pay for costs not covered by the Pilot Program, but instead merely indicates that it will pursue grants, donations and earmarks for capital funding of the full implementation. Not only does this show that OpenCape does not presently know who will pay for its share of the costs, the Commission cannot even determine from the application whether its expectations to obtain funding are realistic because OpenCape provides little to no evidence of its ability to secure funding from these sources. Rather, OpenCape merely explains that its federal and state legislative delegations generally (but not for its specific Pilot Program application) have shown an interest in expanding access to underserved regions of Massachusetts. Accordingly, the Commission denies OpenCape's request to participate in the Pilot Program.

43. *North Link of Northern Enterprises, Inc. Application.* North Link of Northern Enterprises, Inc. (North Link of Northern Enterprises) seeks $2.5 million in funding for a project generally described as connecting eight hospitals and medical centers to the regional fiber optic backbone to promote the use of a photo archiving system (PAS), virtual intensive care units, and teleconferencing. However, beyond the vague description of the project, North Link of Northern Enterprises does not provide sufficient information to determine how the project will advance the goals of the *2006 Pilot Program Order.* Notably, like OpenCape's application, North Link of Northern Enterprises fails to provide budget information that would permit the Commission to assess whether the application comports with program requirements including, in particular, whether the funding request is for eligible services. Additionally, the work plan submitted by North Link of Northern Enterprises fails to provide specific details on the phases of construction anticipated by Northern Enterprises. Instead, the work plan merely states that Phase I, which consists of laying 75 miles of the 400 miles of fiber optics, will begin June 4, 2007, with the balance of the project completed by 2009. The Commission therefore denies North Link of Northern Enterprises' request for Pilot Program participation because it does not demonstrate it is qualified to be eligible for its broad request for funding.

44. *Illinois Hospital Association Application.* The Commission also denies the application of Illinois Hospital Association because it seeks funding primarily for costs that are beyond the scope of the Pilot Program. In particular, Illinois Hospital Association states that it seeks over $800,000 for its proposed project to provide greater access to the existing state broadband network, Illinois Century Network, for rural health care providers to promote the use of telehealth and telemedicine throughout the state. The funding, however, is primarily for staff support and customer premises equipment, which are outside the scope of the Pilot Program. Thus, the Commission denies this application for participation in the Pilot Program. The Commission notes, however, that the Illinois Rural HealthNet Consortium and the Iowa Health System will be participants in the Pilot Program and will offer services in Illinois. The Commission also notes that the two main proposed recipients in Illinois Hospital Association's application, University of Illinois College of Medicine at Rockford and Southern

Illinois School of Medicine, are also included in Illinois Rural HealthNet Consortium's application.

45. *Institute for Family Health Application.* Similarly, the Institute for Family Health in New York seeks $2.4 million in funding for its proposed network that would extend its current electronic health records (EHR) and practice management system from its New York City-based urban network to rural health centers throughout the Mid-Hudson Valley region. Of the requested Pilot Program funding, over 75 percent is for costs that are beyond the scope of the Pilot Program, including customer premises equipment such as personal computers and server hardware, personnel costs, and $1.5 million in funding for software licenses. Accordingly, the Commission declines to select Institute for Family Health to participate in the Pilot Program.

46. *Valley View Hospital Application.* The Valley View Hospital in Colorado's application also fails to qualify for participation in the Pilot Program because it seeks funding primarily for ineligible Pilot Program costs. Specifically, Valley View Hospital seeks $195,000 in funding for the rental of an RP–7 robotic system, which is a tele-operated, mobile robotic system that enables remote presence. As stated above, the Pilot Program funding will promote the utilization of dedicated broadband capacity to provide health care services. Valley View Hospital, however, seeks funding not for network design or build-out, but for medical equipment, which is specifically excluded from funding. The Commission finds, therefore, that participation in the Pilot Program by Valley View Hospital is not appropriate.

47. *Alabama Rural Health Network.* The application submitted by the Alabama Department of Economic and Community Affairs (Alabama Rural Health Network) also seeks funding for ineligible Pilot Program costs. In particular, ADECA seeks $91,275 in funding, of which $45,000 is for a category simply labeled ''contractual.'' The rest of the funding is divided amongst personnel costs, travel, ''fringe benefits,'' and ''indirect costs.'' None of these costs are eligible costs for which Alabama Rural Health Network could receive reimbursement. Further, none of those costs appear to be associated with network design or deployment of infrastructure. Instead, Alabama Rural Health Network's application appears to be seeking funding for a survey it will conduct of the state's hospitals to determine their needs, and an evaluation of the state's broadband providers to determine their capabilities. These deficiencies in Alabama Rural Health Network's proposal warrant its exclusion from participation in the Pilot Program.

48. *Pioneer Health Network Application.* Pioneer Health Network's application states that it seeks to develop a health information system focusing on health information technology (such as patient level health and quality information exchange and establishing a health information environment that emphasizes security and privacy of patient data and that leverages technologies that are enhanced by the evolving interoperability standards) as opposed to telehealth and telemedicine applications. Beyond this general description, Pioneer Health Network does not provide any details concerning its proposal except to indicate the project involves software applications, as opposed to network infrastructure (which the applicant states will largely be provided by the existing statewide backbone). Because the Pilot Program does not fund medical software applications, the Commission declines to find Pioneer Health Network eligible for funding.

49. *Taylor Regional Hospital Application.* Taylor Regional Hospital's application is so vague in providing overall details about how it qualifies for participation in the Pilot Program that the Commission denies its application. In particular, Taylor Regional Hospital's application fails to specify the amount of funding it seeks, specifying only that its proposed project would cost $7,200 per year. In addition, Taylor Regional Hospital fails to provide any detail supporting its costs for the Commission to determine whether these costs are associated with network design or network costs. Taylor Regional Hospital's stated objective is to use the funding to enhance its imaging distribution system, community-wide scheduling system, and its Laboratory Information System. It is unclear from the application whether such enhancements would require network upgrades or whether they are software application upgrades, which would be ineligible for support. Moreover, Taylor Regional Hospital does not identify the health care providers it seeks to connect. Instead, Taylor Regional Hospital states that the facilities that will be included in the network are ''Taylor Regional Hospital and all the affiliates associated with [it].'' This omission on the part of Taylor Regional Hospital makes it impossible, among other things, to determine whether there will be a *de minimis* number of the rural health care providers; identify network configuration; and to ensure that the proposed project is consistent with the goals, objectives, and other criteria of the *2006 Pilot Program Order.* Thus, the Commission denies this application.

50. *United Health Services Application.* Similarly, United Health Services of New York (United Health Services) provides such inadequate detail of its network costs that it does not merit further participation in the Pilot Program. Notably, United Health Services provides no budget, but instead merely lists its monthly connectivity costs, without specifying whether the costs would support an existing network or construction of a new network. The Commission notes that United Health Services does include a management and work plan and schedule. However, without a budget, the Commission is not able to identify how United Health Services intends to allocate the funding for each phase of the plan. In addition, its application fails to include financial data or to detail in any meaningful way its proposed network build-out and costs. Consequently, the Commission finds Pilot Program participation by United Health Services would not be consistent with the *2006 Pilot Program Order.*

51. *World Network Institutional Services Application.* World Network Institutional Services (WNIS) also fails to detail its costs or almost any other aspect of its proposal in its cursory four-page application to adequately assess its qualifications for participation in the Pilot Program. WNIS seeks $100 million in funding but fails to provide a budget breaking out its cost estimates. Additionally, WNIS does not provide any detail as to which health care facilities it would include in its network, preventing the Commission, among other things, from determining whether the network would serve more than a *de minimis* number of rural health care providers. Rather, WNIS states that a list will be provided in ''later correspondence'' (which was never provided). Further, WNIS fails to provide specific information on how it will pay for its portion of the costs of the network. Instead, WNIS offers that its financial support will come from ''advertisers and users.'' Based on these deficiencies and the overall vagueness of the application, the Commission declines to include WNIS as a participant in the Pilot Program.

52. *Hendricks Regional Health Application.* Hendricks Regional Health (Hendricks), like WNIS, fails to provide a work plan that sufficiently details the management/leadership structure, work plan, or budget. In particular, Hendricks provides no budget information in its

application. The only estimate in its application is for the per mile cost of deploying the fiber optic cable it seeks, which is $50,000 per mile for approximately 58 miles. And, even this information is not accompanied by any specific detail or documentation. The Commission also has concerns about the work plan presented by Hendricks. Instead of providing detailed information, Hendricks provides a vague timeline with no additional information to support its assumptions on deployment of the fiber optic cable. Like Taylor, United Health, and WNIS, the deficiencies in Hendricks's application do not warrant its participation in the Pilot Program.

53. *Southwest Pennsylvania Regional Broadband Health Care Network Application.* Similarly, the application submitted by Southwest Pennsylvania Regional Broadband Health Care Consortium (Southwest Pennsylvania Regional Broadband Health Care Network) fails to provide information that sufficiently details its work plan or budget. Specifically, Southwest Pennsylvania Regional Broadband Health Care Network offers a budget that fails to provide any line-item details. Rather, Southwest Pennsylvania Regional Broadband Health Care Network indicates that it intends to build 180 miles of fiber optic cable and states that it will need $7.2 million in funding to do so. Southwest Pennsylvania Regional Broadband Health Care Network provides no detail on how it arrived at this figure or what it includes. SW Pennsylvania Consortium also provides no information regarding the on-going cost of operating its network. Because there are no details in its budget, the Commission is also not able to determine what network equipment Southwest Pennsylvania Regional Broadband Health Care Network intends to purchase. Additionally, Southwest Pennsylvania Regional Broadband Health Care Network's fails to document its funding sources. It, instead, lists the facilities that would join the network and assigns an annual cost of $5,456.95 to each facility for five years without providing detail on where the entities will get the additional money or providing letters of support from these entities. Moreover, like Hendricks, Southwest Pennsylvania Regional Broadband Health Care Network's work plan represents nothing more than a timeline. Finally, the Commission notes that of the 99 facilities listed in its application, only five are eligible rural health care providers. Given the amount of funding requested, the lack of financial and other detail needed to justify funding, and the small percentage of rural health care providers that will be connected, the Commission finds Pilot Program participation would not be consistent with the *2006 Pilot Program Order.*

54. Finally, as noted above, in the *2006 Pilot Program Order,* one of the purposes of the Pilot Program was to encourage health care providers to aggregate their connection needs to form a comprehensive statewide or regional dedicated health care network. The applications that the Commission is approving in this Order have fulfilled that purpose and together will cover 42 states and three United States territories. The Commission encourages those eligible health care providers that are part of the denied applications to pursue ways to be included in the approved consortia in their states or regions. The Commission also encourages the rural health care facilities in the denied applications to contact USAC to discuss their possible participation in the existing RHC support mechanism. In addition, after three years, the Commission intends to revisit its rules and determine how to improve the current program. The Commission encourages the denied applicants to participate in any subsequent proceedings and reapply at that time.

E. Pilot Program Administration

55. In this section, the Commission discusses several issues related to the effective administration of the Pilot Program. The Commission first provides clarification regarding what entities are eligible health care providers for purposes of the Pilot Program, which services are eligible and ineligible for Pilot Program support, and which sources of funding are eligible and ineligible for selected participants' 15 percent minimum funding contribution. The Commission also provides specific guidance concerning selected participants' compliance with the submission of program forms to the USAC. For example, in order to receive universal service support, selected participants must submit with the required USAC Forms, detailed worksheets concerning their proposed network costs, certifications demonstrating universal service support will be used for its intended purposes, letters of agency from each participating health care provider, and detailed invoices showing actual incurred costs of project build-out. As discussed below, selected participants that fail to comply with these procedures and the other program requirements the Commission discusses here will be prohibited from receiving support under the Pilot Program. Finally, the Commission addresses various requests for waiver of Commission rules filed by applicants. Among other things, the Commission denies waiver requests of the Commission's rule requiring that Pilot Program selected participants competitively bid their proposed network projects. In doing so, the Commission reaffirms that the competitive bidding process remains an important safeguard to ensuring universal service support is used wisely and efficiently ensuring that the most cost effective service providers are selected by selected participants, and the Commission discusses the factors on which selected participants should rely in making their cost effectiveness determinations in the competitive bidding process.

1. Eligible Health Care Providers

56. As stated above, the existing RHC support mechanism utilizes the statutory definition of ''health care provider'' established in section 254(h)(7)(b) of the 1996 Act. Excluded from the list of eligible health care providers are nursing homes, hospices, other long-term care facilities, and emergency medical service facilities. Although emergency medical service facilities are not eligible providers for purposes of the RHC Pilot Program, Pilot Program funds may be used to support costs of connecting emergency medical service facilities to eligible health care providers to the extent that the emergency medical services facility is part of the eligible health care provider. Additionally, pharmacies are excluded from the definition of health care providers. Accordingly, under the RHC Pilot Program, only eligible health care providers and consortia that include eligible health care providers may apply for and receive discounts. Additionally, applicants, as well as individual health care facilities included in an application, that have been convicted of a felony, indicted, suspended, or debarred from award of federal or state contracts, or are not in compliance with FCC rules and requirements shall not be eligible for discounts under the Pilot Program. To the extent that the applications the Commission selects herein contain ineligible health care providers, such providers may participate but must be treated by the applicant and by USAC as if the providers were for-profit entities and therefore are ineligible to receive any support associated with their portion of the Pilot Program network. Further, selected participants

or individual health care facilities that are part of the network of a selected participant that are delinquent in debt owed to the Commission shall be prohibited from receiving universal service Pilot Program support until full payment or satisfactory arrangement to pay the delinquent debt(s) is made. Also, selected participants or individual health care facilities included in the network of a selected participant that are barred by the General Services Administration (GSA) from receiving federal contracts, subcontracts, and certain types of federal assistance shall be prohibited from receiving universal service Pilot Program support until the GSA determines that they are eligible for federal contracts, subcontracts, and certain types of federal assistance.

57. *Participation of State Organizations and Entities as Consortia Members.* State organizations and entities may apply for funding on behalf of consortia members, but cannot themselves receive funding for services under the Pilot Program unless they satisfy the statutory definitions for health care provider under section 254(h)(7)(b) of the 1996 Act. In addition, state organizations or entities that provide eligible service offerings are eligible to be selected as a service provider by a Pilot Program selected participant through the competitive bidding processes. Notably, the Commission previously determined that the term ''health care provider'' should be interpreted narrowly and, in the past, excluded potential entities from the eligible health care provider definition when not explicitly included in the statutory definition by Congress. Despite the limitations of section 254(h)(7)(b), however, the Commission's rules allow eligible health care providers to join consortia with other eligible health care providers; with schools, libraries, and library consortia eligible under Subpart F of 47 CFR part 54; and with public sector (governmental) entities to order telecommunications services. As state organizations or entities constitute ''public sector (governmental) entities,'' they may join consortia under the Commission's rules.

58. Therefore, although state organizations and entities do not constitute eligible health care providers, the Commission finds they may apply on behalf of eligible health care providers as part of a consortium (*e.g.*, as consortia leaders) to function, for example, in an administrative capacity for eligible health care providers within the consortium. In doing so, however, state organizations and entities are prohibited from receiving any funding from the Pilot Program. The Commission notes that in the E-Rate context, it has explicitly required state telecommunications networks that secure discounts under the universal service support mechanisms on behalf of eligible schools and libraries, or consortia that include an eligible school or library, to pass on these discounts to the eligible schools or libraries. The Commission clarifies here and makes explicit that any discounts, funding, or other program benefits secured by a state entity or organization or other ineligible entity functioning as a consortium leader under the Pilot Program must be passed on to consortia members that are eligible health care providers. In addition, the Commission also finds that, like state entities, other not-for-profit ineligible entities may apply on behalf of eligible health care providers as part of a consortium (*i.e.*, as consortia leaders), and otherwise function in an administrative capacity for eligible health care providers within the consortium. Like state organizations and entities, these not-for-profit entities are prohibited from receiving any funding from the Pilot Program.

2. Rural Health Care Pilot Program Network Components Eligible and Ineligible for Support

59. In the *2006 Pilot Program Order,* the Commission stated that funding provided under the Pilot Program would be used to support the costs of constructing dedicated broadband networks that connect health care providers in a state or region, and that connect such state and regional networks to the public Internet, Internet2, or NLR. The Commission explained that eligible costs include those for initial network design studies. The Commission stated in the *2006 Pilot Program Order* that it would fund necessary network design studies for selected participants, as these studies would enhance access to advanced telecommunications and information services by enabling applicants to determine how best to deploy an efficient network that includes multiple locations and various technologies. Several applicants requested funding for network design studies. For example, Kentucky Behavioral Telehealth Network proposes to complete a network design study in Year One, and in Year Two build out the designed network to link the existing statewide network of regional behavioral health providers with rural health care providers to improve access to a full range of medical care. And, Penn State Milton S. Hershey Medical Center plans in Year One to connect several rural hospitals to the Medical Center and to conduct a comprehensive inventory and capacity analysis of additional facilities it seeks to add in Year Two. For purposes of the Pilot Program, the Commission clarifies that funding for network design studies includes costs paid to a consultant to analyze both technical and non-technical requirements and develop feasible network designs based on the analyses. The Commission further explained that eligible costs also include those for deploying transmission facilities and providing access to advanced telecommunications and information services, including non-recurring and recurring costs. The Commission notes that in the *2006 Pilot Program Order,* it stated that authorized purposes include the costs of ''advanced telecommunications and information services.'' The Commission clarifies here that, consistent with the Act, authorized purposes include the costs of access to advanced telecommunications services. In light of the many applications the Commission received seeking funding and the wide range of network and related components for which support is sought, the Commission further clarifies the services eligible and ineligible for support to ensure that the Pilot Program operates to facilitate the goals of the *2006 Pilot Program Order.* The Commission thus clarifies that eligible non-recurring costs include those for design, engineering, materials and construction of fiber facilities or other broadband infrastructure, and the costs of engineering, furnishing (*i.e.*, as delivered from the manufacturer), and installing network equipment. Recurring and non-recurring costs of operating and maintaining the constructed network are also eligible once the network is operational. Further, to the extent that a selected participant subscribes to carrier-provided transmission services (*e.g.*, SONET, DS3s) in lieu of deploying its own broadband network and access to advanced telecommunications and information services, the costs for subscribing to such facilities and services are also eligible.

60. Ineligible costs include costs that are not directly associated with network design, deployment, operations and maintenance. These ineligible costs include, but are not limited to:

- Personnel costs (including salaries and fringe benefits), except for those personnel directly engaged in designing, engineering, installing, constructing, and managing the dedicated broadband network. Ineligible costs of this category include, for example, personnel to perform program management and

coordination, program administration, and marketing.

- Travel costs.
- Legal costs.
- Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations. For example, costs for end-user training, *e.g.*, training of health care provider personnel in the use of telemedicine applications, are ineligible.
- Program administration or technical coordination that involves anything other than the design, engineering, operations, installation, or construction of the network.
- Inside wiring or networking equipment (*e.g.*, video/Web conferencing equipment and wireless user devices) on health care provider premises except for equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment.
- Computers, including servers, and related hardware (*e.g.*, printers, scanners, laptops) unless used exclusively for network management.
- Helpdesk equipment and related software, or services.
- Software, unless used for network management, maintenance, or other network operations; software development (excluding development of software that supports network management, maintenance, and other network operations); Web server hosting; and Website/Portal development.
- Telemedicine applications and software; clinical or medical equipment.
- Electronic Records management and expenses.
- Connections to ineligible network participants or sites (*e.g.*, for-profit health care providers) and network costs apportioned to ineligible network participants.
- Administration and marketing costs (*e.g.*, administrative costs; supplies and materials (except as part of network installation/construction); marketing studies, marketing activities, or outreach efforts; evaluation and feedback studies).

61. USAC may only fund eligible costs as described in this Order and is prohibited from funding ineligible costs or providing funding to ineligible participants. The Commission requires, as discussed below, Pilot Program participants to identify and detail all ineligible costs, including costs apportioned to for-profit and other ineligible network participants or sites, in their line-item network cost worksheets submitted to USAC with FCC Forms 465 and 466–A, and to clearly demonstrate that Pilot Program support amounts will not be used to fund ineligible costs. The Commission notes that some applicants sought waivers of the *2006 Pilot Program Order*, if necessary, for certain costs. To the extent that these costs constitute ineligible costs, as described in this Order, selected participants may not request or receive Pilot Program funds to support these costs. Accordingly, the Commission denies these applicants' requests to expand the scope of funding available under the *2006 Pilot Program Order*. The Commission notes that if a product or service contains both eligible and ineligible components, costs should be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The clear delineation must have a tangible basis and the price for the eligible portion must be the most cost-effective means of receiving the eligible service. If the ineligible functionality is ancillary to an eligible component, the costs need not be allocated to the ineligible functionality. An ineligible functionality may be considered ''ancillary'' if (1) a price for the ineligible component that is separate and independent from the price of the eligible components cannot be determined, and (2) the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.

3. Eligible Sources for 15 Percent of Non-Funded Costs

62. The Commission finds that selected participants' minimum 15 percent contribution of eligible network costs must be funded by an eligible source as described in this Order. Selected participants are required to identify with specificity their source of funding for the minimum 15 percent contribution of eligible network costs in their submissions to USAC, as discussed below. The Commission emphasizes that selected participants' 15 percent contributions must go towards eligible network costs only, as described in this Order. In order to ensure that the Pilot Program operates consistent with the goals and objectives of the *2006 Pilot Program Order* and that funds are used to the benefit of public and non-profit health care providers, the Commission places limitations on from what source selected participants may derive their minimum 15 percent contribution of eligible network costs. Only funds from an eligible source will apply towards selected participants' required 15 percent minimum contribution. Eligible sources include the applicant or eligible health care provider participants; state grants, funding, or appropriations; federal funding, grants, loans, or appropriations except for RHC funding; and other grant funding, including private grants. The Commission stresses that participants who do not demonstrate that their 15 percent contribution comes from an eligible source or whose minimum 15 percent funding contribution is derived from an ineligible source will be denied funding by USAC. Ineligible sources include in-kind or implied contributions; a local exchange carrier (LEC) or other telecom carrier, utility, contractor, or other service provider; and for-profit participants. Moreover, selected participants may not obtain any portion of their 15 percent contribution from the existing RHC support mechanism. The Commission finds that these limitations on sources are necessary to ensure that participating health care providers adequately invest in their network projects to ensure efficiency in both cost and design and to assume some minimal level of risk. Requiring participants to have a vested interest in the approved network project safeguards against program manipulation and protects against waste, fraud, and abuse. The Commission recognizes that some selected participants identified improper sources for their participant contribution in their Pilot Program applications; however, the Commission allows those selected participants to amend their project proposals in their submissions to USAC solely for the purpose of coming into compliance with the requirements of this Order. Applicants so amending their applications are prohibited from using this opportunity to increase in any way the amount of support they are seeking.

4. Cost Effectiveness

63. Consistent with existing rules and requirements, selected participants must comply with the competitive bidding process to select a service provider for their proposed projects. As part of this requirement, the Commission reiterates that each selected participant is required to certify to USAC that the service provider it chooses is, to the best of the applicant's knowledge, the most cost-effective service or facility provider available. The Commission has defined ''cost effective'' for purposes of the existing RHC support mechanism as ''the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider

deems relevant to * * * choosing a method of providing the required health care services.'' In selecting the most cost-effective bid, in addition to price, the Commission requires selected participants to consider non-cost evaluation factors that include prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including solicitation compliance; and environmental objectives (if appropriate). The Commission has previously concluded that non-price evaluation factors, such as prior experience, personnel qualifications, and management capability, may form a reasonable basis on which to evaluate whether a bid is cost effective. Because designing and constructing a new network or building upon an existing network represents a substantial undertaking that requires technical expertise, training, and skills of a different level than those services supported by the existing RHC support mechanism, the Commission makes consideration of these factors mandatory for selected participants.

64. The existing RHC support mechanism, unlike the schools and libraries universal service support (E-Rate) program, does not require participants to consider price as the primary factor in selecting service providers. The Commission has stated that applicants to the RHC support mechanism should not be required to use the lowest-cost technology because factors other than cost, such as reliability and quality, may be relevant to fulfill their telemedicine needs. This rationale remains appropriate for the Pilot Program. Thus, selected participants are not required to select the lowest bid offered, and need not consider price as the sole primary factor in selecting bids for construction of their broadband networks and the services provided over those networks. The applications selected for participation in the Pilot Program serve a variety of telemedicine and telehealth needs and entail complex network design, as well as infrastructure planning and construction. In developing a telemedicine network infrastructure, selected participants may find non-cost factors to be as or more important than price. For example, selected participants may find technical excellence and personnel qualifications particularly relevant in determining how to best meet their health care and telemedicine needs. Requiring applicants to use the lowest cost technology available could result in selected participants being relegated to using obsolete or soon-to-be retired technology. In addition, initially higher cost options may prove to be lower in the long-run, by providing useful benefits to telemedicine in terms of future medical and technological developments and maintenance. Thus, the Commission does not require selected participants to make price the sole primary factor in bid selection, but it must be a primary factor.

5. Network Modifications

65. Selected participants shall follow the network design plan outlined in their applications. Nevertheless, the Commission recognizes that selected participants may find it necessary or desirable to modify the network design plans set forth in their Pilot Program applications. For example, less expensive network components that may be available since applications were compiled may permit selected participants to acquire higher capacity at lower prices. Alternatively, selected participants may be able to add health care providers to their network within the available maximum support amounts. Although network modifications may deviate from a selected participant's initial application, to the extent a modification results in a supported network only connecting a de minimis number of rural health care providers, the modification may result in adjustment of available support or denial of participation in the Pilot Program for a selected participant. Therefore, to the extent a selected participant wishes to upgrade, replace technology, or add eligible health care providers to its proposed network prior to commencing and completing the competitive bidding process, it may receive support to do so as long as that support does not exceed the maximum available support amount and the support is used for eligible expenses. The Commission also notes that selected participants, including health care provider consortium members, may decline to participate in the Pilot Program, if they choose, subject to the restrictions noted in this Order. However, once a service provider is selected and an FCL is issued by USAC, selected participants' support will be capped at the FCL amount, and the selected participant may only modify the network within that support amount. Any modifications that would increase the amount of support needed above the maximum available support amount for the selected participant in this *Order* will not be funded by the Pilot Program. After the issuance of the FCL, selected participants must complete the project for which funding is awarded.

6. Public Safety and Coordination for Emergencies

66. In 2004, the President issued an Executive Order calling for the development and implementation of a national interoperable health information technology infrastructure. A key element of this plan is the NHIN initiative which promotes a ''network of networks,'' where state and regional health information exchanges and other networks that provide health information services work together, through common architecture (services, standards, and requirements), processes and policies to securely exchange information. In response to the Pilot Program, HHS has identified ways the Pilot Program and the NHIN can advance the provision of critical patient information to clinicians at the point of care to enable vital links for disaster preparedness and emergency response, improve healthcare, population health, and prevention of illness and disease.

67. The Commission agrees with HHS that the Pilot Program can advance the goals of the NHIN initiative. Accordingly, selected participants shall use Pilot Program funding in ways to ensure their funded projects are consistent with HHS's health IT initiatives in several areas: Health IT standards; certification of electronic health records (EHRs), personal health records (PHRs), and networks; the NHIN architecture; the National Resource for Health Information Technology; and the Public Health Information Network (PHIN). In particular, where feasible, selected participants shall: (1) Use health IT systems and products that meet interoperability standards recognized by the HHS Secretary; (2) use health IT products certified by the Certification Commission for Healthcare Information Technology; (3) support the NHIN architecture by coordinating activities with the organizations performing NHIN trial implementations; (4) use resources available at HHS's Agency for Healthcare Research and Quality National Resource Center for Health Information Technology; (5) educate themselves concerning the Pandemic and All Hazards Preparedness Act and coordinate with the HHS Assistant Secretary for Public Response as a resource for telehealth inventory and for the implementation of other preparedness and response initiatives; and (6) use resources available through HHS's Centers for Disease Control and Prevention PHIN to facilitate interoperability with public health and emergency organizations. In addition, as

part of the Pilot Program quarterly reporting requirements, selected participants shall inform the Commission whether or how they have complied with these initiatives. The Commission finds that expecting selected participants to comply with these HHS initiatives likely will result in more secure, efficient, effective, and coordinated use of Pilot Program funding and the supported networks. Finally, selected participants shall coordinate in the use of their health care networks with HHS and, in particular, with CDC in instances of national, regional, or local public health emergencies (*e.g.*, pandemics, bioterrorism). In such instances, where feasible, selected participants shall provide access to their supported networks to HHS, including CDC, and other public health officials.

7. Forms and Related Program Requirements

68. Selected participants are required to follow the normal RHC support mechanism procedures. USAC currently provides funds directly to the telecommunications service providers, not to the applicant. The Commission reminds selected participants and service providers that universal service support received by service providers must be distributed to or credited against the portion of the project approved for eligible health care providers only. In instances where credits cannot be issued to a service provider, selected participants may receive payment directly from USAC, provided the selected participant complies with the administrative requirements in this Order. Under the current program, to obtain discounted telecommunications services, applicants must file certain forms with USAC. The Commission notes that all selected participants must obtain FCC registration numbers (FRNs). An FRN is a 10-digit number that is assigned to a business or individual registering with the FCC. This unique FRN is used to identify the registrant's business dealings with the FCC. Selected participants may obtain an FRN through the Commission's Web site. Selected participants may obtain a single FRN for the entire application or consortium (*i.e.*, each health care provider does not need a separate FRN). First, applicants file FCC Form 465 with USAC to make a bona fide request for supported services. FCC Form 465 is the means by which an applicant requests bids for supported services and certifies to USAC that the applicant is eligible to benefit from the RHC support mechanism. USAC posts the completed FCC Form 465 on its Web site and an applicant must wait at least 28 days from the date on which its FCC Form 465 is posted on USAC's the Web site before making commitments with the selected service provider(s). Next, after the 28 days have expired, an applicant submits FCC Form 466 and/or 466–A. These forms are used to indicate the type(s) of service ordered by the applicant, the cost of the ordered service, information about the service provider(s), and the terms of the service agreement(s). Each applicant must certify, on the FCC Form 466 and 466–A, that the applicant has selected the most cost-effective method of providing the selected service(s). FCC Form 467 is the next and final form an applicant submits. FCC Form 467 is used by the applicant to notify USAC that the service provider has begun providing the supported service. An applicant must submit one FCC Form 467 for each FCC Form 466 and or 466–A that the applicant submitted to USAC. FCC Form 467 is also used to notify USAC when the applicant has discontinued the service or if the service was or will not be turned on during the funding year. The Commission reminds selected participants that all health care providers participating in the RHC Pilot Program must maintain documentation of their purchases of service for five years from the end of the funding year, which must include, among other things, records of allocations for consortia and entities that engage in eligible and ineligible activities. Upon request, beneficiaries must make available all documents and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's Office of Inspector General, to USAC, and to their auditors. This record retention requirement also applies to service providers that receive support for serving rural health care providers.

69. The Commission recognizes that due to the unique structure of the Pilot Program, selected participants may have difficulty in preparing the required RHC forms to be submitted to USAC. The Commission therefore finds it necessary to provide guidance regarding how these forms should be completed to minimize the possibility of unintentional error on the part of selected participants. The Commission also takes this opportunity to provide further guidance on Pilot Program requirements and additional data that must be submitted with the FCC RHC forms. In addition, the Commission directs USAC to conduct a targeted outreach program to educate and inform selected participants on the Pilot Program administrative process, including the various filing requirements and deadlines, in order to minimize the possibility of making inadvertent ministerial, or clerical errors in completing the required forms.

70. *FCC Form 465 Process.* To ensure a fair and transparent bidding process, the Commission directs selected participants to clearly identify, on form Line 29 (description of Applicant's telecommunications/Internet needs) of the FCC Form 465, the bids the applicant is requesting for the network it intends to construct under the three-year Pilot Program. The Commission reiterates that selected participants cannot receive support that exceeds the amount designated in Appendix B. For selected participants seeking funding in the first year of the Pilot Program (Funding Year 2007), they should indicate that Funding Year 2007 is the year for which they are seeking support in Line 26 of the FCC Form 465. Selected participants should also indicate if they will be seeking funding for Year Two (Funding Year 2008) and/or Year Three (Funding Year 2009) of the Pilot Program in Line 29 of FCC Form 465 in their filings in Year One. Selected participants should also indicate the Year(s) for which each health care provider is seeking funding in the FCC Form 465 attached spreadsheet, discussed further below.

71. Selected participants are not required to submit multiple FCC Forms 465 for each participating health care provider, although they may choose to do so. The Commission notes that vendors or service providers participating in the competitive bid process are prohibited from assisting with or filling out a selected participants' FCC Form 465. Specifically, for purposes of administrative efficiency, selected participants may submit one master FCC Form 465, provided the information contained in the FCC Form 465 identifies each eligible health care provider participating in the Pilot Program and is included in an attached Excel or Excel compatible spreadsheet. Appendix E of this Order provides a spreadsheet for selected participants. The Commission notes also that Southern Ohio Healthcare Network requests a waiver of the number of locations permitted per FCC Form 465. Because the Commission permits selected participants to submit a single master FCC Form 465 with attachment that identifies each eligible health care provider participating, it denies this waiver request as moot. The Commission also requires selected

participants to provide a brief explanation for each health care provider participating in the network, identifying why each health care provider is eligible under section 254 of the 1996 Act and the Commission's rules and orders. This information should be included in an attachment to the FCC Form 465 submitted to USAC. The Commission notes also that FCC Form 465 requires applicants to certify that the health care provider is located in a rural area. As described above, the Pilot Program is open to all eligible public and non-profit health care providers. Therefore, the Commission clarifies that a participating non-rural eligible health care provider need not certify that it is located in a rural area. Consistent with USAC procedures, electronic signatures are permissible for purposes of the FCC Form 465 attachment. Selected participants that anticipate competitively bidding out their entire approved network project need only submit FCC Form 465 and the attached spreadsheet in Year One (or the first year they intend to competitively bid the project). Selected participants that anticipate competitively bidding their network project each Funding Year of the Pilot Program (*e.g.*, Year One, Year Two, and Year Three) shall submit a new FCC Form 465 within the appropriate Funding Year window(s) and requisite attachments for each stage. Selected participants whose network projects include both an initial network design study and network construction based on that initial network design study are required to competitively bid the network construction portion of the project separate from the initial network design study. To the extent that a selected participant seeks to add, remove, or substitute a health care provider in its proposed network after a funding commitment has been made by USAC, the selected participant must file an amended FCC Form 465 Attachment providing any new FCC Form 465 information in order to allow USAC to determine its statutory eligibility. The Commission notes, however, once USAC has issued an FCL, program support for the relevant Pilot Program Funding Year is capped at that amount. In addition, along with its FCC Form 465 and related spreadsheet, each selected participant must also submit a copy of the most recent record version of its application previously submitted to the Commission as of the release date of this Order (as modified by, or consistent with, this Order, if applicable). Selected participants must also provide sufficient information to define the scope of the project and network costs to enable an effective competitive bidding process. The Commission notes that selected participants may not pre-qualify service providers for the competitive bidding process.

72. Finally, the Commission requires each applicant to include with its FCC Form 465 a Letter of Agency (LOA) from each participating health care facility to authorize the lead project coordinator to act on its behalf, to demonstrate that each health care provider has agreed to participate in the selected participant's network, and to avoid improper duplicate support for health care providers participating in multiple networks. The Commission has affirmed USAC's requirement that an applicant applying as a consortium in the E-Rate program must submit an LOA from each of its members expressly authorizing the applicant to submit an applicant on its behalf. LOAs should include, at a minimum: The name of the entity filing the application (i.e., lead applicant or consortium leader); name of the entity authorizing the filing of the application (i.e., the participating health care provider/consortium member); the relationship of the facility to the lead entity filing the application; the specific timeframe the LOA covers; the signature, title and contact information (including phone number, physical address, and e-mail address) of an official who is authorized to act on behalf of the health care provider/consortium member; signature date; and the type of services covered by the LOA. For health care providers located on tribal lands, LOAs must also be signed by the appropriate management representative of the health care facility. In most cases, this will be the director of the facility. If the facility is a contract facility that is run solely by the tribe, the appropriate tribal leader, such as the tribal chairperson, president, or governor, shall also sign the LOA, unless the health care responsibilities have been duly delegated to another tribal government representative. The Commission notes that a number of selected participants have included health care provider participants in their networks that are also participating in another selected participant's proposed network. Although the Commission does not prohibit a health care provider from participating in more than one selected participant's supported project, it is prohibited from receiving support for the same or similar services. Specifically, network costs for participation in one project must be separate and distinct from network costs resulting from participation in any other project.

73. *SPIN Requirement.* All service providers that participate in the RHC Pilot Program are required to have a Service Provider Identification Number (SPIN). SPINs must be assigned before USAC can authorize support payments; therefore, all service providers submitting bids to provide services to selected participants will need to complete and submit a Form 498 to USAC for review and approval if selected by a participant before funding commitments can be made. Only service providers that have not already been assigned a SPIN by USAC will need to complete and submit a Form 498. Form 498 can be found on the USAC Web site on its forms page.

74. *FCC Form 466–A Process.* Selected participants should submit an FCC Form 466–A to indicate the type(s) of network construction ordered, the cost of the ordered network construction, information about the service provider(s), and the terms of the service agreements. To the extent a selected participant files an FCC Form 466 instead of an FCC Form 466–A, USAC may permit the selected participant to amend its filing by submitting an FCC Form 466–A to replace the FCC Form 466. The Commission notes that although the title of this Form is ''Internet Services Funding Request and Certification Form,'' selected participants should use the FCC Form 466–A for all eligible funding requests under the Pilot Program because it is suitable for Pilot Program purposes. Selected participants are not required to submit multiple FCC Forms 466–A for each participating health care provider location, although they may choose to do so. Specifically, for purposes of administrative efficiency, selected participants may submit one master FCC Form 466–A, provided the information contained in the FCC Form 466–A identifies the location of each health care provider participating in the Pilot Program and is included in an attached Excel or Excel compatible spreadsheet. Appendix F of this Order provides a spreadsheet for selected participants. Consistent with USAC procedures, electronic signatures are permissible for purposes of the FCC Form 466–A attachment. Selected participants seeking funding for Year One of the Pilot Program (Funding Year 2007) should indicate this in Line 16. For selected participants that seek to receive support under Year One of the Pilot Program, the due date is June 30, 2008, consistent with Commission rules. Thereafter, the due date for each year of the Pilot Program corresponds with the

existing RHC support mechanism deadline. Thus, the FCC Form 466–A is due on June 30, and the FCC Form 465 is due 28 days prior, on June 2. Selected participants seeking funding for Year Two (Funding Year 2008) and/or Year Three (Funding Year 2009) of the Pilot Program should indicate the applicable Funding Years in their description in Box 17. In addition, on Line 18 of FCC Form 466–A, upon request, selected participants should provide documentation to allow USAC to clearly identify allocated eligible costs related to the provision of services for each health care provider.

75. Along with its FCC Form 466–A, a selected participant must submit to USAC a copy of the contracts or service agreements with the selected service provider(s). Selected participants shall also include a detailed line-item network costs worksheet that includes a breakdown of total network costs (both eligible and ineligible costs). Selected participants choosing to submit multiple FCC Forms 466–A need only submit one master network costs worksheet. Selected participants' network costs worksheet submissions shall demonstrate how ineligible (*e.g.*, for-profit) participants will pay their fair share of network costs. Selected participants shall identify these costs with specificity in their network costs worksheet submissions. USAC may reject line-item worksheets that lack sufficient specificity to determine that costs are eligible under this Order or the 1996 Act. Selected participants shall also identify in their network costs worksheet Pilot Program the applicable maximum funding amounts pursuant to this Order. In addition, each selected participant must identify with specificity its source of funding for its 15 percent contribution of eligible network costs in its line-item network costs worksheet submitted to USAC. A network costs worksheet for submission to USAC is attached to this Order at Appendix G. Selected participants must use this worksheet when submitting their funding requests to USAC.

76. A selected participant requesting funds for a multi-year contract (*e.g.*, Year One and Year Two, or Year One, Two, and Three) should indicate this in its initial network costs worksheet submissions. Although a selected participant may utilize a multi-year contract, USAC may commit funding for only a single year in that year's FCL for the participant, *i.e.*, USAC shall issue a separate FCL upon receiving the FCC Form 466–A and related attachments on an annual basis for the applicable funding year. A participant using multi-year contracts is not required to re-bid the contract in subsequent Pilot Program funding years, but it must submit a network costs worksheet and FCC Form 466–A to USAC for commitment approval for each funding year it participates in the Pilot Program. A selected participant who seeks funding for a multi-year agreement may only modify its network (including adding, deleting, or substituting health care providers) to the extent that funding does not exceed the funding year amount listed in the selected participant's initial network costs worksheet for the applicable funding year.

77. Selected participants alternatively may choose to competitively bid their projects in phases (*e.g.*, Year One—network design study; Year Two—network construction and installation) for each year that they participate in the Pilot Program, in which case selected participants shall submit FCC Forms 465 and 466–A and the requisite attachments, as described in this Order, for each year they participate. Selected participants that elect to request funding for a single year (*e.g.*, Year One), but intend to request funding for additional Pilot Program Years (*e.g.*, Year Two or Year Three) should submit a detailed line-item network costs worksheet for the additional Pilot Program Years for which it intends to request funding in Year One.

78. The Commission requires selected participants and participating service providers (once selected through the competitive bidding process) to file a certification with their FCC Form 466–A with the Commission and with USAC stating that all federal RHC Pilot Program support provided to selected participants and participating service providers will be used only for the eligible Pilot Program purposes for which the support is intended, as described in this Order, and consistent with related Commission orders, section 254(h)(2)(A) of the 1996 Act, and § 54.601 *et seq.* of the Commission's rules. For selected participants, certifications shall be filed by the lead applicant, as well as the legally and financially responsible organization, if not the same entity. Pilot Program support amounts shall only be committed by USAC to the extent that the requisite certification has been filed. The certification must be filed with both the Office of the Secretary of the Commission, clearly referencing WC Docket No. 02–60, and with USAC in the form of a sworn affidavit executed by a corporate officer attesting to the use of the Pilot Program support for the approved Pilot Program purposes for which support is intended. Selected participants and participating service providers must also send a courtesy copy of their certifications to Antoinette Stevens, (202) 418–7387, *antoinette.stevens@fcc.gov* in the Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Failure to certify will result in suspension of processing of the selected participant's forms and support. Upon receipt and approval of a selected participant's FCC Form 466–A, USAC will then issue a FCL for each Pilot Program funding year. USAC shall also provide the lead project coordinator with a copy of an FCL concerning any funding request for which it is the lead project coordinator.

79. *FCC Form 467 Process.* The Commission also finds that it is necessary to provide selected participants with guidance regarding how to fill out FCC Form 467 for reimbursement. In the third box of Block 3 on FCC Form 467, selected participants are asked to indicate, among other things, whether ''service was not (or will not be) turned on during the funding year.'' Selected participants should leave the third box of Block 3 blank. Instead, the Commission directs selected participants to notify USAC and the Commission, in writing, when the approved network project has been initiated within 45 calendar days of initiation. Selected participants must file a copy of this notice with the Commission in WC Docket No. 02–60. Selected participants must also send a courtesy copy of this notification to Antoinette Stevens, (202) 418–7387, *antoinette.stevens@fcc.gov* in the Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. If the selected participant's network build-out has not been initiated within six months of the FCL sent by USAC to the selected participant and service provider(s) approving funding, the selected participant must notify USAC and the Commission within 30 days thereafter explaining when it anticipates that the approved network project will be initiated. Upon receipt and approval of a selected participant's FCC Form 467, USAC will then issue a Health Care Provider Support Schedule to the health care provider and the service provider. The purpose of the support schedule is to provide a detailed report of the approved service(s) and support information for each health care provider and service

provider. The service provider uses the support schedule to determine how much credit the health care provider will receive each month. Once the service provider receives the schedule, the provider must start applying program discounts to the health care provider during the next possible billing cycle based on the schedule. Selected participants must complete build-out of the networks funded by this Pilot Program within five years from the date of the initial FCL, after which the funding commitments made in this Order will no longer be available. It is appropriate to allow five years for selected participants to build out their Pilot Program networks. Unlike the E-Rate program and the existing RHC support mechanism which does not have deadlines for submitting invoices to USAC, the Pilot Program, in keeping with its limited scope, imposes a five-year invoicing deadline. The Commission finds this time period sufficient for network build-outs. Further, selected participants may not receive any Pilot Program support after the expiration of the invoice deadline, which is five years from receipt of their initial FCL for all Pilot Program funding years. To the extent that a Pilot Program participant fails to meet this build-out deadline, the Commission intends also to require the applicant repay any Pilot Program funds already disbursed. In addition, selected participants shall also notify the Commission and USAC in writing upon completion of the pilot project construction and network buildout. Selected participants must file a copy of this notice with the Commission in WC Docket No. 02–60. Selected participants must also send a courtesy copy of this notification to Antoinette Stevens, (202) 418–7387, *antoinette.stevens@fcc.gov* in the Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

80. *USAC Outreach.* In addition to the filing requirements discussed above, each selected participant shall provide to USAC within 14 calendar days of the effective date of this Order the name, mailing address, e-mail address, and telephone number of the lead project coordinator for the Pilot Program project or consortium. Within 30 days of the effective date of this Order, USAC shall conduct an initial coordination meeting with selected participants. USAC shall further conduct a targeted outreach program to educate and inform selected participants on the Pilot Program administrative process, including various filing requirements and deadlines, in order to minimize the possibility of selected participants making inadvertent ministerial, or clerical errors in completing the required forms. The Commission also directs USAC to notify selected participants when each funding year begins. The Commission expects that these outreach and educational efforts will assist selected participants in meeting the Pilot Program's requirements. Further, the Commission believes such an outreach program will increase awareness of the filing rules and procedures and will improve the overall efficacy of the Pilot Program. The Commission also encourages selected participants to contact USAC with questions prior to filing their FCC forms. The direction the Commission provides USAC will not lessen or preclude any of its review procedures. Indeed, the Commission retains its commitment to detecting and deterring potential instances of waste, fraud, and abuse by ensuring that USAC scrutinizes Pilot Program submissions and takes steps to educate selected participants in a manner that fosters appropriate Pilot Program participation.

81. As part of its outreach program, USAC shall also conduct educational efforts to inform selected participants of which network components are eligible for RHC Pilot Program support in order to better assist selected participants in meeting the Pilot Program's requirements. When USAC has reason to believe that a selected participant's funding request includes ineligible network components or ineligible health care providers, USAC shall: (1) Inform the selected participant promptly in writing of the deficiencies in its funding request, and (2) permit the selected participant 14 calendar days from the date of receipt of notice in writing by USAC to revise its funding request to remove the ineligible network components or facilities for which Pilot Program funding is sought or allow the selected participant to provide additional documentation to show why the components or facilities are eligible. To the extent a selected participant does not remove ineligible network components or facilities from the funding request, USAC must deny funding for those components or facilities. The 14-day period should provide sufficient time for selected participants to modify their funding requests to remove ineligible services.

82. Selected participants must submit complete and accurate information to USAC as part of the application and review process. Selected participants, however, will be provided the opportunity to cure ministerial and clerical errors on their FCC Forms and accompanying data submitted to USAC pertaining to the Pilot Program. USAC shall inform selected participants within 14 calendar days in writing of any and all ministerial or clerical errors that it identifies in a selected participant's FCC Forms, along with a clear and specific explanation of how the selected participants can remedy those errors. USAC shall also inform selected participants within this same 14 calendar days in writing of any missing or incomplete certifications. Selected participants will be presumed to have received notice five days after such notice is postmarked by USAC. USAC shall, however, continue to work beyond the 14 days with selected participants attempting in good faith to provide documentation. Selected participants shall have 14 calendar days from the date of receipt of notice in writing by USAC to amend or re-file their FCC Forms for the sole purpose of correcting the ministerial or clerical errors identified by USAC. Selected participants shall not be permitted to make material changes to their applications. Selected participants denied funding for errors other than ministerial or clerical errors are instructed to follow USAC's and the Commission's regular appeal procedures. Selected participants that do not comply with the terms of this Order, section 254 of the 1996 Act, and Commission rules and orders will be denied funding in whole or in part, as appropriate.

83. *Disbursement of Pilot Program Funds.* USAC will disburse Pilot Program funds based on monthly submissions (*i.e.*, invoices) of actual incurred eligible expenses. The Commission notes that several applicants requested that awarded funds be distributed in a specific manner, departing from established USAC precedents. For the reasons explained herein, Pilot Program funds will be distributed as described in this Order. Service providers are only permitted to invoice USAC for eligible services apportioned to eligible health care provider network participants. Service providers shall submit detailed invoices to USAC on a monthly basis for actual incurred costs. This invoice process will permit disbursement of funds to ensure that the selected participants' network projects proceed, while allowing USAC and the Commission to monitor expenditures in order to ensure compliance with the Pilot Program and prevent waste, fraud, and abuse. USAC shall respond to service provider

invoices in accordance with its current invoicing payment plan. USAC follows a bi-monthly invoicing cycle. Invoices received from the 1st through the 15th of the month will be processed by the 20th of the month. Invoices received from the 16th through the 31st of the month will be processed by the 5th of the following month. The Commission directs USAC to modify its current sample ''RHCD Service Provider Invoice'' for purposes of the Pilot Program to ensure consistency with this Order. In doing so, USAC shall ensure that invoices reflect total incurred eligible costs, including those eligible costs for which selected participants will be responsible, to enable USAC to adjust disbursements to service providers to 85 percent or less of eligible incurred costs. All invoices shall also be approved by the lead project coordinator authorized to act on behalf the health care provider(s), confirming the network build-out or services related to the itemized costs were received by each participating health care provider. The lead project coordinator shall also confirm and demonstrate to USAC that the selected participant's 15 percent funding contribution has been provided to the service provider for each invoice. Further, the Commission expects USAC to review data submitted by Pilot Program participants to ensure that participants' data submissions are consistent with invoices submitted as well as to ensure that network deployments are proceeding according to the approved dedicated network plans. Finally, the Commission directs USAC to conduct random site visits to selected participants to ensure support is being used for its intended purposes, as well as to conduct site visits as necessary and appropriate based on USAC's review of the selected participants' data submissions. If funding is disbursed to any service provider and the approved network project is abandoned or left incomplete, the Commission permits USAC to pursue recovery of funds from the selected participant's financially and legally responsible organization, eligible health care providers, or service provider, as appropriate. In addition, as discussed *infra*, the Commission may seek recovery of funds, assess forfeitures, or impose fines if it determines that Pilot Program support has been used in violation of Commission rules or orders, or section 254 of the 1996 Act.

8. Waivers

84. In the *2006 Pilot Program Order,* the Commission indicated that, after they are selected, the selected participants would work within the confines of the existing RHC support mechanism, including the requirement ''to comply with the existing competitive bidding requirements, certification requirements, and other measures intended to ensure funds are used for their intended purposes.'' The Commission indicated, however, that it would waive additional program rules if such waivers are necessary for the successful operation of the Pilot Program. After reviewing the applications and the requested rule waivers, the Commission finds that selected participants have not demonstrated good cause exists to warrant waiving certain Commission rules, including the competitive bidding rules and the rule prohibiting resale of telecommunications services or network capacity. Among other reasons, the Commission finds requiring selected participants to comply with these rules will further the goals and principals of the *2006 Pilot Program Order* and protect against waste, fraud, and abuse. For the reasons discussed below, however, the Commission finds good cause to waive the program application deadline and to clarify other administrative rules related to participation in the Pilot Program.

a. Competitive Bidding

85. Pursuant to §§ 54.603 and 54.615 of the Commission's rules, each eligible health care provider must participate in a competitive bidding process and follow any additional applicable state, local, or other procurement requirements to select the most cost-effective provider of services eligible for universal service support under the RHC support mechanism. The Commission previously granted a limited waiver of the rural health care program's competitive bidding and cost-effectiveness rules to allow selected participants to pre-select Internet2 or NLR. The Commission clarifies that this waiver only applies to pre-selecting Internet2 or NLR and that selected participants must follow the competitive bidding rules for all other service requests. To satisfy the competitive bidding requirements, selected participants must submit an FCC Form 465 that includes a description of the services for which the health care provider is seeking support and wait at least 28 days from the date on which this information is posted on the USAC's website before making commitments with the selected service provider. After selecting a service provider, the participant must certify that it selected the most cost-effective method of providing service. A selected Pilot Program participant may select a service provider(s) that may be part of a pre-existing contract(s), provided that the selection of the provider(s) complies with the terms of this Order, including the Commission's competitive bidding rules. Construction or services completed prior to compliance with the competitive bidding requirements are not eligible for Pilot Program funding. Various selected participants request a waiver of these competitive bidding requirements. The majority of these selected participants argue that waivers are necessary because they have pre-selected their preferred service provider or would like to select service providers without the burden or uncertainty of the competitive bidding process. Other selected participants argue that waivers are necessary because they have already contracted with service providers. For the reasons discussed below, the Commission does not find selected participants have demonstrated good cause exists for waiving the competitive bidding rules.

86. In establishing the competitive bidding process, the Commission determined that a competitive bidding requirement was necessary to ''help minimize the support required by ensuring that rural health care providers are aware of cost-effective alternatives'' and ''ensure that the universal service fund is used wisely and efficiently.'' The selected participants requesting waivers identify service providers they would like to provide service or those that are already providing service but give no assurance that they are aware of other alternatives or that the identified providers offer the most cost-effective method of providing service. For example, Rural Nebraska Healthcare Network claims that the competitive bidding process is unnecessary because Mobius Communications Company is ''uniquely positioned to bury fiber and maintain the system in western Nebraska'' but does not demonstrate that Mobius is the most cost-effective choice because it does not explain whether it sought bids from, or even considered providers other than Mobius. Similarly, Rural Wisconsin Health Cooperative requests a waiver of the competitive requirements because it has ''identified Charter Communications as the optimal provider'' but does not explain if it considered or is aware of other providers or why Charter Communications is superior to other potential providers. The competitive bidding requirements are not unduly burdensome because, if the service provider the selected participant

identified in its application is the most cost-effective, the selected participant can select that service provider after completing the competitive bidding process; if this service provider is not the most cost-effective, then the competitive bidding process may identify more cost-effective solutions. In using the competitive bidding process, selected participants will thus have an opportunity to identity and select the most cost-effective service provider to build-out their proposed network projects. The competitive bidding requirements also will not create any unreasonable delays for selected participants because the selected participant must wait only 28 days from the date its service request is posted on USAC's website to select the most cost-effective method of providing service. Accordingly, the Commission finds selected participants have not demonstrated that special circumstances warrant deviation from §§ 54.603 and 54.615 of the Commission's rules.

87. Requiring all selected participants to strictly comply with the competitive bidding process is in the public interest because the competitive bidding process is vital to the Commission's effort to ensure that universal service funds support services that satisfy the exact needs of an institution in the most cost-effective manner. The competitive bidding requirements ensure that selected participants are aware of the most cost-effective method of providing service and ensures that universal service funds are used wisely and efficiently, thereby providing safeguards to protect against waste, fraud, and abuse. Additionally, the competitive bidding rules are consistent with section 254(h)(2)(A) of the 1996 Act because competitive bidding furthers the requirement of ''competitively neutrality'' by ensuring that universal service support does not disadvantage one provider over another, or unfairly favor or disfavor one technology over the other. The Commission finds that it is in the public interest and consistent with the *2006 Pilot Program Order* to require all participants to participate in the competitive bidding process. None of the selected participants that seek a waiver of the competitive bidding process offer persuasive evidence to the contrary. Accordingly, the Commission does not find good cause exists to waive the Commission's competitive bidding rules.

88. Heartland Unified Broadband Network seeks a waiver of § 54.611 of the Commission's rules to allow it to be reimbursed for equipment that it has already ordered. The Commission denies this waiver as moot because, as explained above, all selected participants are required to comply with the competitive bidding requirements that require soliciting bids prior to entering into agreements with providers. The Commission also denies this waiver because it is inconsistent with the Pilot Program goal to only fund the construction of new broadband facilities.

89. To further prevent against waste, fraud, and abuse, the Commission requires participants to identify, when they submit their Form 465, to USAC and the Commission any consultants, service providers, or any other outside experts, whether paid or unpaid, who aided in the preparation of their Pilot Program applications. Pilot Program participants must also retain records and make available all document and records that pertain to them, including those of contractors and consultants working on their behalf, to the Commission's OIG, to the USF Administrator, and to their auditors. The Commission also notes that sanctions, including enforcement action, are appropriate in cases of waste, fraud, and abuse. For example, Rocky Mountain HealthNet identifies service provider participants and a consultant who helped prepare its application. Also, Northeast HealthNet identifies a consultant who helped prepare its applications. Identifying these consultants and outside experts could facilitate the ability of USAC, the Commission, and law enforcement officials to identify and prosecute individuals that may seek to manipulate the competitive bidding process or engage in other illegal acts. To ensure selected participants comply with the competitive bidding requirements, they must disclose all of the types of relationships explained above.

b. Restriction on Resale

90. Section 254(h)(3) of the 1996 Act provides that ''[t]elecommunications services and network capacity provided to a public institutional telecommunications user under this section may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.'' The Commission interpreted this section to restrict the resale of any services purchased pursuant to the section 254(h) discount for services under the RHC support mechanism. Rural Nebraska Healthcare Network seeks a waiver, if necessary, of the resale prohibition set forth in § 54.617(a) of the Commission's rules. Rural Nebraska Healthcare Network argues that this rule should not be interpreted to prohibit the provision of capacity to for-profit entities or to the fiber strands ownership plan detailed in its application.

91. As an initial matter, the Commission notes that although the Commission has authority to waive regulatory requirements, it does not have authority to waive a requirement imposed by statute. Although Rural Nebraska Healthcare Network couches its request as one of waiver of the Commission's rules, it is actually requesting a waiver of the statute. The implementation of rule 54.617(a) flowed directly from the plain meaning of the statute. Thus, regardless of whether the Commission were to waive the rule, the statutory prohibition on resale would still remain. The Commission concludes, because rule 54.617(a) is based on a statute, it cannot be waived.

92. The Commission further notes that, the prohibition on resale does not prohibit for-profit entities, paying their fair share of network costs, from participating in a selected participant's network. Section 254(h)(3) of the 1996 Act and § 54.617(a) of the Commission's rules are not implicated when for-profit entities pay their own costs and do not receive discounts provided to eligible health care providers. A selected participant cannot sell its network capacity supported by funding under the Pilot Program but could share network capacity with an ineligible entity as long as the ineligible entity pays its fair share of network costs attributable to the portion of network capacity used. To the extent participants connect to for-profit entities they may do so as long as they comply with § 54.617 and any other applicable Commission rules.

93. To prevent against violation of the prohibition on resale of supported services and to further prevent against waste, fraud, and abuse, the Commission requires participants to identify all for-profit or other ineligible entities, how their fair share of network costs was assessed, and proof that these entities paid or will pay for their costs. Specifically, as part of their reporting requirements in Appendix D of this Order, selected participants must: Provide project contact and coordination information; identify all health care facilities included in the network; provide a network narrative; provide a diagram of the planned network indicating those facilities currently in place; identify the non-recurring and recurring costs; describe how costs have been apportioned and the sources of the funds to pay them; identify any technical or non-technical requirements or procedures necessary for ineligible entities to connect to the

participant's network; provide an update on the project management plan; provide information on the network's self sustainability; and provide detail on how the supported network has advanced telemedicine benefits.

c. Eligibility

94. Texas Health Information Network Collaborative and Virginia Acute Stroke Telehealth Project request that the Commission expand the list of facilities eligible for support. Section 254(h)(7)(b) of the 1996 Act defines health care providers. The Commission adopted § 54.601 of its rules based on a plain reading of the statute. In the *2006 Pilot Program Order,* the Commission explained that it would use the definition of health care provider found in § 54.601 of the Commission rules to determine what facilities are eligible for support. As explained above, the Commission does not have authority to waive a requirement imposed by statute. The Commission concludes, because § 54.601 is based on a statutory requirement, the Commission cannot waive § 54.601 and expand the types of health care facilities that are eligible for support under the Pilot Program. The Commission finds however, although emergency medical service facilities themselves are not eligible providers for purposes of the RHC Pilot Program, Pilot Program funds may be used to support costs of connecting emergency medical service facilities to eligible health care providers to the extent that the emergency medical services facility is part of the eligible health care provider.

d. Service Eligibility

95. The Missouri Telehealth Network and Iowa Health System seek a waiver of § 54.601(c) of the Commission's rules to ensure that funding under the Pilot Program is not restricted to funding available under the existing RHC support mechanism. Section 54.601 of the Commission's rules identifies which services are supported under the existing RHC support mechanism. Because the Pilot Program provides funding to cover the costs associated with different facilities and services than does the existing support mechanism, the Commission finds that it is necessary to waive this section of our rules. Specifically, Pilot Program funding is not limited to the provision of telecommunications services and Internet access, but rather includes funding of infrastructure deployment and network design studies, as well. Accordingly, the Commission finds good cause exists to waive § 54.601(c) of the Commission's rules to enable selected participants to receive support for the eligible support described above.

e. Filing Deadline

96. The deadline for receipt of Pilot Program applications was May 7, 2007. A number of applicants filed their applications one day after the deadline on May 8, 2007. Some of these applicants filed petitions with the Commission seeking a waiver of the May 7, 2007, filing deadline. For example, Texas Health Information Collaborative seeks a waiver because it contends it attempted to file its application electronically before the deadline but, due to technical difficulties, its application was received at 12:02 a.m. on May 8, 2007. Also, Western Carolina University contends it should be granted a waiver because technical difficulties prevented it from timely filing its application.

97. The Commission finds that good cause exists to accept late filed applications because the applicants provide information and seek funding for projects that further the goals of the Pilot Program to stimulate deployment of innovative telehealth, and in particular, telemedicine services to those areas of the country where the need for those benefits is most acute. Furthermore, the late filed applications will help further the goals of the Pilot Program because they provide the Commission with information about how to revise the existing RHC support mechanism. Accepting these applications has not caused any delay; indeed, the Commission finds it significant that none of the applicants missed the filing deadline by more than one day. Moreover, many of the late applications were mailed before the deadline but received after the deadline, while other applicants tried unsuccessfully to file their applications electronically before the deadline. Accordingly, the Commission waives the May 7, 2007, deadline and accepts the applications filed after the deadline. The Commission waives this request for all applicants that filed late. This waiver, however, is not an ongoing waiver. The Commission will not consider applications that have yet to be filed. Further, the Commission clarifies that in supra Part D, the Commission denies United Health Services' application based on a review of its application, not because it was received after the filing deadline.

f. Distributing Support

98. Section 54.611 of the Commission's rules sets forth how a telecommunications service provider may receive universal service support for providing service to an eligible health care provider. Pursuant to § 54.611, a telecommunications carrier providing services eligible for rural health care universal support shall offset the amount eligible for support against its universal service obligation. If the total amount of support owed to the carrier exceeds its universal service payment obligation, calculated on an annual basis, the carrier is entitled to receive the differential as a direct reimbursement. Any reimbursement due a carrier, however, shall be made after the offset is credited against the carrier's universal service obligation. Any reimbursement shall be submitted to a carrier no later than the first quarter of the calendar year following the year in which the costs for the services were incurred.

99. Some selected participants have requested a waiver of § 54.611. These selected participants claim that a different type of distribution process is needed for the Pilot Program. For example, Rural Nebraska Healthcare Network argues that a waiver is necessary because the offset provision cannot be applied to non-telecommunications carriers and support must be distributed in a manner that allows for the buildout of the proposed networks to proceed immediately. Similarly, the California Healthcare Network argues that § 54.611 should be waived to allow non-telecommunications carriers to receive funding under the Pilot Program and to allow ''USAC to pay vendor(s) monthly based on invoiced amounts.''

100. The Commission finds good cause exists to waive § 54.611 of the rules, as described herein. The Commission agrees with those applicants that argue that a waiver is necessary for non-telecommunications carriers seeking funding. As explained above, section 254(h)(2)(A) does not limit support to only eligible telecommunications carriers. Because the rule is drafted to apply to eligible telecommunications carriers only, the Commission finds it necessary and in the public interest to waive it for non-eligible telecommunications carriers selected to participate in the Pilot Program.

101. The Commission also finds that good cause exists to waive this rule to permit both telecommunications carriers and non-telecommunications carriers to be distributed support in the same manner. Because § 54.611 requires USAC to reimburse carriers the first quarter of the calendar year following the year in which costs were incurred, providers receiving support under the Pilot Program could be owed millions of

dollars by the time they are reimbursed in full. Such a delay in reimbursement could jeopardize the timely deployment of selected participants' broadband networks, which would be contrary to the goals of the Pilot Program to stimulate deployment of broadband infrastructure necessary to support telemedicine services to those areas of the country where the needs for those benefits is most acute. Additionally, § 54.611 could produce an inequitable result by depriving providers of the funding flow needed to continue to perform their service contracts with selected participants because, among other things, service providers may potentially be unable to meet their payment obligations to vendors without finding other means of financial support. Waiving § 54.611 also serves the public interest because it promotes the goals of section 254 of the 1996 Act to enhance access to advanced telecommunications and information services for health care providers. Accordingly, the Commission finds good cause exists to waive § 54.611 and instructs all participants, service providers, and USAC to follow the support distribution method outlined in this Order.

g. Funding Year 2006 Deadline

102. Selected participants also request that the Commission waive the Funding Year 2006 deadline. Section 54.623(c)(3) of the Commission's rules establishes June 30 as the deadline for all required forms to be filed with USAC for the funding year that begins on the previous July 1. Therefore, for funding year 2006, the deadline is June 30, 2007. Although participants were selected after the June 30, 2007 deadline, a waiver of § 54.623 is not necessary because, as detailed in *supra* section III.B, Funding Year 2006 Pilot Program support will be rolled over to Funding Year 2007, and Year One of the RHC Pilot Program will begin in Funding Year 2007. The Commission therefore, finds these waiver requests are moot.

h. Other Waiver Requests

103. The Pilot Program is broader in scope than the existing RHC support mechanism because it provides funding for up to 85 percent of eligible costs associated with the construction of dedicated broadband health care network capacity that connects health care providers in a state and region. In contrast, the existing RHC support mechanism is designed to ensure that rural health care providers pay no more than their urban counterparts for their telecommunications needs. Because the Pilot Program and existing RHC support mechanism support different network connections related to rural health care, many of the rules that apply to the existing program may not apply to the Pilot Program. Various participants note that the Commission's rules for the existing RHC support mechanism are either inapplicable or should be waived to achieve the goals of the Pilot Program. In particular, participants request waivers of and specific deviation from Commission rules to allow: (1) Funding for services supplied by providers who are not telecommunications carriers or Internet service providers; (2) non-rural eligible entities to directly request funding under the Pilot Program; (3) selected participants to receive funding for services that exceed the maximum supported distance for rural health care providers and not base support on the difference between the urban and rural rate; and (4) support to be based on actual costs, not the difference between the urban and rural rate. The Commission agrees with these commenters that many of these rules may be inapplicable to the Pilot Program but, to the extent any rule is inapplicable, selected participants must follow the eligibility requirements detailed in this Order and section 254 of the 1996 Act.

104. First, funding under the Pilot Program is not limited to telecommunications providers. As discussed above, the Commission established the Pilot Program under the authority of section 254(h)(2)(A) of the 1996 Act, which does not limit support to only eligible telecommunications carriers. In the *2006 Pilot Program Order*, the Commission explained that eligible health care providers may choose any technology and provider of supported services and may utilize any currently available technology. Accordingly, service providers who participate in the competitive bidding process do not need to be eligible telecommunications carriers to receive Pilot Program funds. For example, a selected participant may choose to have the network design studies done by a non-telecommunications carrier. If a service provider is not a telecommunications carrier, certain rules providing support only to telecommunications carriers are inapplicable to the extent they do not contemplate funding to non-telecommunications carriers for the purpose of the Pilot Program.

105. Second, funding under the Pilot Program is not limited to rural health care providers. Consistent with the mandate provided in section 254(h)(2)(A) and general principles of universal service, in the *2006 Pilot Program Order*, the Commission opened participation in the Pilot Program to all eligible public and non-profit health care providers to promote the Pilot Program goal of stimulating the deployment of innovative telehealth networks that will link rural health care facilities to urban health care facilities and provide telemedicine services to rural communities. Applicants, however, were instructed to include in their proposed networks public and non-profit health care providers that serve rural areas. Accordingly, eligible non-rural health care providers may receive funding under the Pilot Program order. To the extent the rules that govern the existing RHC support mechanism do not contemplate funding eligible non-rural health care providers, they are inapplicable. Non-rural eligible health care providers should follow the steps detailed *supra*, section II.E.7.

106. Third, the existing RHC support mechanism limits support to a maximum supported distance. The Pilot Program differs because it explicitly provides funding for deploying dedicated broadband capacity that connects health care providers in a state or region and does not set maximum supported distances. Specifically, the ''purpose of the pilot program is to encourage health care providers to aggregate their connections needs to form a comprehensive statewide or regional dedicated health care network.'' Accordingly, to the extent distance limitation rules conflict with the goals of the Pilot Program to create state and regional networks, the rules are inapplicable.

107. Fourth, the Pilot Program provides funding for up to ''85% of an applicant's costs of deploying a dedicated broadband network, including any necessary network design studies, as well as the costs of advanced telecommunications and information services that will ride over the network.'' The Commission recognized that the funding percentage under the Pilot Program exceeds the funding percentages under the existing RHC support mechanism. Unlike the existing RHC support mechanism, the Pilot Program does not use the difference between the urban rate and the rural rate to calculate support. Accordingly, the rules for calculation of support do not apply to Pilot Program participants.

9. Other Administrative Issues

108. The Commission also clarifies that selected participants may not receive funds for the same services under the Pilot Program and either the existing universal service programs—

which consist of the RHC support mechanism, the E-Rate program, the High-Cost program, and the Low Income program—or other federal programs, including, *e.g.*, federal grants, awards, or loans. For example, funds received by Pilot Program selected participants as part of their participation in the existing RHC support mechanism may not be used by selected participants to offset costs for the same services incurred as a result of participation in the Pilot Program. The Commission, the Wireline Competition Bureau (Bureau), and Office of Inspector General (OIG), maintain the authority to investigate and enforce program violations, including against selected participants who violate this prohibition, and to recover funds used for unauthorized purposes.

109. The Commission also seeks the timely and effective implementation of the three-year Pilot Program. To expedite implementation, and consistent with §§ 0.91 and 0.291 of the Commission's rules, the Commission delegates to the Bureau the authority to waive the relevant sections of subpart G of part 54 of the Commission's rules for selected participants to the extent they prove unreasonable or inconsistent with the sound and efficient administration of the Pilot Program. In instances where a selected participant, including a consortium, is unable to participate in the Pilot Program for the three-year term due to extenuating circumstances, a successor may be designated by the Bureau upon request.

III. Oversight of the Pilot Program

110. The Commission is committed to guarding against waste, fraud, and abuse, and ensuring that funds disbursed through the Pilot Program are used for appropriate purposes. In particular, the Commission intends to conduct audits of all selected participants and service providers and, if necessary, investigations of any selected participants and service providers to determine compliance of selected participants with the Pilot Program, Commission rules or orders, and section 254 of the 1996 Act. The beneficiary or service provider will be required to comply fully with the requirements of the audits including, but not limited to, providing full access to accounting systems and its reports, source documents, employees, contractors, and internal and external audit reports that are involved in whole or in part in the administration of this Pilot Program. This includes presenting personnel to testify, under oath, at a deposition if requested by of the Office of Inspector General. Such audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the 1996 Act or Commission rules, and thus may reveal instances in which Pilot Program awards were improperly distributed or used. The Commission also delegates authority to the Bureau to revoke funding awarded to any selected participant making unapproved material changes to the network design plan set forth in their initial Pilot Program application. The Commission reiterates that payment may be suspended if the project appears not to be consistent with the approved network plan. To the extent the Commission finds that funds were distributed and/or used improperly, the Commission will require USAC to recover such funds though its normal processes, including adjustment of support amounts by selected participants or service providers in other universal service programs from which they receive support. The Commission intends that funds disbursed in violation of a Commission rule that implements section 254 or a substantive program goal will be recovered. Sanctions, including enforcement action, are appropriate in cases of waste, fraud, and abuse, but not in cases of clerical or ministerial errors. If a selected participant or service provider fails to comply with Commission rules, orders, or mandatory filings, the Commission also has the authority to assess forfeitures for violations of Commission rules and orders. In addition, selected participants and service providers that willfully make false statements can be punished by fine or forfeiture under sections 502 and 503 of the Communications Act, or fine or imprisonment under Title 18 of the United States Code. Further, the Commission has found that ''debarment of applicants, service providers, consultants, or others who have defrauded the USF is necessary to protect the integrity of the universal service programs.'' Therefore, the Commission intends to suspend and debar parties from the Pilot Program who are convicted of or held civilly liable for the commission or attempted commission of fraud and similar offenses arising out of their participation in the Pilot Program or other universal service programs. The Commission emphasizes that the Commission retains the discretion to evaluate the uses of monies disbursed through the RHC Pilot Program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred and whether recovery is warranted. The Commission remains committed to ensuring the integrity of the program and will aggressively pursue instances of waste, fraud, and abuse under the Commission's procedures and in cooperation with law enforcement agencies. In doing so, the Commission intends to use any and all enforcement measures, including criminal and civil statutory remedies, available under law. The Commission will also monitor the use of awarded monies and develop rules and processes as necessary to ensure that funds are used in a manner consistent with the goals of the Pilot Program. Finally, the Commission reminds selected participants that nothing in this *Order* relieves them of their obligations to comply with other applicable federal laws and regulations.

IV. Reporting Requirements

111. Upon completion of the Pilot Program, the Commission intends to issue a report detailing the results of the program, its status, and recommended changes. In addition, the Commission intends to incorporate any information gathered as part of the Pilot Program in the record in any subsequent proceeding to reform the rural health care mechanism. To assist the Commission in this task, the Commission requires selected participants to submit to USAC and the Commission quarterly reports containing data listed in Appendix D of this *Order*. These data will serve as a guide for further Commission action by informing the Commission's understanding of cost-effectiveness and efficacy of the different state and regional networks funded. These data will also enable the Commission to ensure RHC program funds are being used in a manner consistent with section 254 of the 1996 Act, this *Order*, and the Commission's rules and orders. In particular, collection of this data is critical to the goal of preventing waste, fraud, and abuse by ensuring that funding is flowing through to its intended purpose. Also, we note that selected participants will be subject to audit oversight as discussed and, as such, the Commission will evaluate the allocation methods selected by selected participants in the course of its audit activities to ensure program integrity and to ensure that providers are complying with the program's certification requirements. The certification requirements for rural health care providers are set forth at 47 CFR 54.615(c).

112. The first quarterly report shall be due after two full quarters have passed following the effective date of this *Order* and shall include responsive data from

the effective date of the *Order* to the then-most recent month. These reports will be due on the 30th day of the month beginning each quarter and include data for the prior three months. Thus, reports will be due as appropriate on January 30 (including responsive data for the prior October to December), April 30 (including responsive data for the prior January to March), July 30 (including responsive data for the prior April to June), and October 30 (including responsive data for the prior July to September). Reports will be required for a 72-month period following the initial due date unless the Bureau extends this deadline. Quarterly reports shall also have responsive data separated by month.

113. Failure to provide the data will result in either the elimination of the selected participant from the Pilot Program, loss or reduction of support, or recovery of prior distributions. In accordance with § 54.619 of the Commission's rules, health care providers and selected participants must also keep supporting documentation for these reports for five years and present that information to the Commission or USAC upon request.

V. Procedural Matters

A. Paperwork Reduction Act Analysis

114. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

VI. Ordering Clause

115. Pursuant to the authority contained in sections 1, 4(i), 4(j), 10, 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 10, 201–205, 214, 254, and 403, this Order is adopted. The information collection contained in this Order will become effective following OMB approval. The Commission will publish a document at a later date establishing the effective date.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 08–684 Filed 2–13–08; 8:45am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–49]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Mrs. Evelyn Myers Scott from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years based on her conviction of conspiracy to defraud the United States in connection with her participation in the program. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mrs. Evelyn Myers Scott receives the debarment letter or February 14, 2008, whichever date comes first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debarred Mrs. Evelyn Myers Scott from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.521 and 47 CFR 0.111(a)(14). Attached is the debarment letter, DA 08–49, which was mailed to Mrs. Evelyn Myers Scott and released on January 9, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Trent B. Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter, which attached the suspension letter, follows:

January 9, 2008

[DA 08–49]

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED FACSIMILE (404–261–2842)

Mrs. Evelyn Myers Scott,
c/o Charles M. Abbott, Esq.,
C. Michael Abbott, P.C.,
3127 Maple Drive, NE.,
Atlanta, GA 30305–2503,
E-Mail: *michael@michaelabbottlaw.com*

Re: Notice of Debarment, File No. EB–07–IH–7305

Dear Mrs. Scott:

Pursuant to section 54.521 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E-Rate program'') for a period of three years.[1]

On October 18, 2007, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on November 5, 2007.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to and were convicted of conspiracy to defraud the United States, in violation of 18 U.S.C. 371, for activities in connection with your participation in the E-Rate program involving the Atlanta Public

[1] *See* 47 CFR 0.111(a)(14), 54.521.

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mrs. Evelyn Myers Scott, Notice of Suspension and Initiation of Debarment Proceedings, 22 FCC Rcd 18613 (Inv. & Hearings Div., Enf. Bur. 2007) (Attachment 1).

[3] 72 Fed. Reg. 62477 (November 5, 2007).

[4] *See* Notice of Suspension, 22 FCC Rcd at 18614–15.

[5] *See* 47 CFR 54.521(e)(3) and (4). That date occurred no later than December 5, 2007. *See supra* note 3.

Schools (''APS'').[6] You conspired with others, including your husband Arthur R. Scott, to enter into an E-Rate contract on behalf of APS in return for personal payoffs.[7] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.521(c) of the Commission's rules.[8] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[9] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.'' [10]

Sincerely,
Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)
Aaron M. Danzig, Esq., Assistant United States Attorney.

October 18, 2007

[DA 07–4335]

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED AND FACSIMILE (404–261–2842)

Mrs. Evelyn Myers Scott
c/o Charles M. Abbott, Esq.
C. Michael Abbott, P.C.
3127 Maple Drive, NE.
Atlanta, GA 30305–2503
E-Mail: michael@michaelabbottlaw.com

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–7305

Dear Mrs. Scott:

The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction for conspiracy to defraud the United States in violation of 18 U.S.C. 371 in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').

[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to engaging in a conspiracy to defraud the United States in connection with your participation in the E-Rate program.[4] You admitted that while employed by the Atlanta Public Schools (''APS'') Information Services Department, you conspired with others, including your husband Arthur R. Scott (''Scott''), to enter into an E-Rate contract with a vendor on behalf of APS. In return for entering into the E-Rate contract, the vendor agreed to pay money to the consulting firm owned by you and Scott.[5] The loss and the restitution that you owed to the E-Rate program resulting from the criminal offense was $300,176.10.[6]

Pursuant to section 54.521(a)(4) of the Commission's rules,[7] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[8] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[9]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[10] Such requests, however, will not ordinarily be granted.[11] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[12] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[13]

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E-Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15] Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to

[6] *See* Notice of Suspension, 22 FCC Rcd at 18614–15.

[7] *See id.* The Bureau also debars Mr. Arthur R. Scott from the E-Rate program. *See* Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Arthur R. Scott, Notice of Debarment, DA 08–50 (Inv. & Hearings Div., Enf. Bur. rel. Jan. 9, 2008).

[8] *Id.* at 18615; 47 CFR 54.521(c).

[9] *See* Notice of Suspension, 22 FCC Rcd at 18615.

[10] *See* 47 CFR 54.521(a)(1), 54.521(a)(5), 54.521(d); Notice of Suspension, 22 FCC Rcd at 18615.

[1] Any further reference in this letter to ''your conviction'' refers to your May 2, 2007 guilty plea and subsequent conviction of conspiracy to defraud the United States. *United States* v. *Evelyn Myers Scott*, Criminal Docket No. 1:07–CR–139–CC–02, Plea Agreement (N.D.Ga. filed May 2, 2007 and entered May 7, 2007) (''*Myers Scott Plea Agreement*''); *United States* v. *Evelyn Myers Scott*, 1:07–CR–139–CC–02, Judgment (N.D.Ga. filed and entered Oct. 2, 2007) (''*Myers Scott Judgment*'').

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] *See Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225, ¶ 66 (2003) (''*Second Report and Order*''). The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.521(a)(6).

[4] *See generally United States* v. *Arthur R. Scott and Evelyn Myers Scott a/k/a Evelyn M. Myers*, Criminal Docket No. 1:07–CR–139, Information (N.D.Ga. filed Apr. 30, 2007 and entered May 3, 2007) (''*Scott and Myers Scott Information*''); *Myers Scott Plea Agreement* at 1.

[5] *Scott and Myers Scott Information* at 1–9. *See also* Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, to Arthur R. Scott, DA 07–4336, dated October 18, 2007.

[6] *See Myers Scott Judgment* at 5; *see also Myers Scott Plea Agreement* at 4.

[7] 47 CFR 54.521(a)(4). *See Second Report and Order*, 18 FCC Rcd at 9225–9227, ¶ ¶ 67–74 (2003).

[8] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[9] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[10] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[11] *Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70.

[12] 47 CFR 54.521(e)(5).

[13] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[14] ''Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[15] *See Second Report and Order*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

[16] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via email to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,

Hillary S. DeNigro

Chief, Investigations and Hearings Division Enforcement Bureau.

cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail)
Aaron M. Danzig, Esq., Assistant United States Attorney.

[FR Doc. E8–2800 Filed 2–13–08; 8:45 am]

BILLING CODE 6712–01–P

[17] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 CFR 54.521(f).

[19] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[20] *Id.*

FEDERAL COMMUNICATIONS COMMISSION

[DA 08–50]

Notice of Debarment; Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Enforcement Bureau (the ''Bureau'') debars Mr. Arthur R. Scott from the schools and libraries universal service support mechanism (or ''E-Rate Program'') for a period of three years based on his conviction of conspiracy to defraud the United States and bribery in connection with his participation in the program. The Bureau takes this action to protect the E-Rate Program from waste, fraud and abuse.

DATES: Debarment commences on the date Mr. Arthur R. Scott receives the debarment letter or February 14, 2008, whichever date come first, for a period of three years.

FOR FURTHER INFORMATION CONTACT: Diana Lee, Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division, Room 4–C330, 445 12th Street, SW., Washington, DC 20554. Diana Lee may be contacted by phone at (202) 418–0843 or e-mail at *diana.lee@fcc.gov.* If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Bureau debarred Mr. Arthur R. Scott from the schools and libraries universal service support mechanism for a period of three years pursuant to 47 CFR 54.521 and 47 CFR 0.111(a)(14). Attached is the debarment letter, DA 08–50, which was mailed to Mrs./Mr. Arthur R. Scott and released on January 9, 2008. The complete text of the notice of debarment is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portal II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. In addition, the complete text is available on the FCC's Web site at *http://www.fcc.gov.* The text may also be purchased from the Commission's duplicating inspection and copying during regular business hours at the contractor, Best Copy and Printing, Inc., Portal II, 445 12th Street, SW., Room CY–B420, Washington, DC 20554, telephone (202) 488–5300 or (800) 378–3160, facsimile (202) 488–5563, or via e-mail *http://www.bcpiweb.com.*

Federal Communications Commission.

Trent B. Harkrader,

Deputy Chief, Investigations and Hearings Division, Enforcement Bureau.

The debarment letter, which attached the suspension letter, follows:

January 9, 2008

DA 08–50

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED AND FACSIMILE (404–872–1622)

Mr. Arthur R. Scott,
c/o Seth D. Kirschenbaum, Esq.,
Davis Zipperman Kirschenbaum & Lotito,
918 Ponce de Leon Avenue, NE.,
Atlanta, GA 30306–4212,
E-Mail: skirschenbaum@dzkl.com.

Re: Notice of Debarment, File No. EB–07–IH–7304

Dear Mr. Scott:

Pursuant to section 54.521 of the rules of the Federal Communications Commission (the ''Commission''), by this Notice of Debarment you are debarred from the schools and libraries universal service support mechanism (or ''E-Rate program'') for a period of three years.[1]

On October 18, 2007, the Enforcement Bureau (the ''Bureau'') sent you a Notice of Suspension and Initiation of Debarment Proceedings (the ''Notice of Suspension'').[2] That Notice of Suspension was published in the **Federal Register** on November 6, 2007.[3] The Notice of Suspension suspended you from the schools and libraries universal service support mechanism and described the basis for initiation of debarment proceedings against you, the applicable debarment procedures, and the effect of debarment.[4]

Pursuant to the Commission's rules, any opposition to your suspension or its scope or to your proposed debarment or its scope had to be filed with the Commission no later than thirty (30) calendar days from the earlier date of your receipt of the Notice of Suspension or publication of the Notice of Suspension in the **Federal Register**.[5] The Commission did not receive any such opposition.

As discussed in the Notice of Suspension, you pled guilty to and were convicted of conspiracy to defraud the United States and bribery, in violation of 18 U.S.C. 371 and 666(a)(1)(B), for activities in connection with your participation in the E-Rate program involving the Atlanta Public Schools (''APS'').[6] You conspired with others,

[1] *See* 47 CFR 0.111(a)(14), 54.521.

[2] Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Arthur R. Scott, Notice of Suspension and Initiation of Debarment Proceedings, 22 FCC Rcd 18617 (Inv. & Hearings Div., Enf. Bur. 2007) (Attachment 1).

[3] 72 FR 62647 (November 6, 2007).

[4] *See* Notice of Suspension, 22 FCC Rcd at 18618–19.

[5] *See* 47 CFR 54.521(e)(3) and (4). That date occurred no later than December 6, 2007. *See supra* note 3.

[6] *See* Notice of Suspension, 22 FCC Rcd at 18618.

including your wife Evelyn Myers Scott, to enter into an E-Rate contract on behalf of APS in return for personal payoffs.[7] In addition, you admitted to taking bribes intending to be influenced and rewarded in connection with the APS E-Rate project.[8] Such conduct constitutes the basis for your debarment, and your conviction falls within the categories of causes for debarment under section 54.521(c) of the Commission's rules.[9] For the foregoing reasons, you are hereby debarred for a period of three years from the debarment date, i.e., the earlier date of your receipt of this Notice of Debarment or its publication date in the **Federal Register**.[10] Debarment excludes you, for the debarment period, from activities ''associated with or related to the schools and libraries support mechanism,'' including ''the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.'' [11]

Sincerely,

Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.

cc: Aaron M. Danzig, Esq., Assistant United States Attorney.

Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail).

October 18, 2007

DA 07–4336

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED AND FACSIMILE (404–872–1622)

Mr. Arthur R. Scott,
c/o Seth D. Kirschenbaum, Esq.,
Davis Zipperman Kirschenbaum & Lotito,
918 Ponce de Leon Avenue, NE.,
Atlanta, GA 30306–4212,
E-Mail: skirschenbaum@dzkl.com.

Re: Notice of Suspension and Initiation of Debarment Proceedings, File No. EB–07–IH–7304

Dear Mr. Scott:

The Federal Communications Commission (''FCC'' or ''Commission'') has received notice of your conviction for conspiracy to defraud the United States and bribery in violation of 18 U.S.C. 371 and 666(a)(1)(B) in connection with your participation in the schools and libraries universal service support mechanism (''E-Rate program'').[1] Consequently, pursuant to 47 CFR 54.521, this letter constitutes official notice of your suspension from the E-Rate program. In addition, the Enforcement Bureau (''Bureau'') hereby notifies you that we are commencing debarment proceedings against you.[2]

I. Notice of Suspension

The Commission has established procedures to prevent persons who have ''defrauded the government or engaged in similar acts through activities associated with or related to the schools and libraries support mechanism'' from receiving the benefits associated with that program.[3] You pled guilty to conspiracy to defraud the United States and bribery for activities in connection with your participation in the E-Rate program.[4] You admitted that while employed as Director of Operational Technology of the Atlanta Public Schools (''APS''), you conspired with others, including your wife Evelyn Myers Scott (''Myers Scott''), to enter into an E-Rate contract on behalf of APS in return for payments to the consulting firm owned by you and Myers Scott from the vendor.[5] In addition, you admitted that you, as agent of APS, corruptly solicited, demanded, accepted and agreed to accept $37,917 in order to be influenced and rewarded in connection with APS's participation in the E-Rate program. The loss and the restitution that you owed to the E-Rate program resulting from the criminal offenses was $300,176.10.[6]

Pursuant to section 54.521(a)(4) of the Commission's rules,[7] your conviction requires the Bureau to suspend you from participating in any activities associated with or related to the schools and libraries fund mechanism, including the receipt of funds or discounted services through the schools and libraries fund mechanism, or consulting with, assisting, or advising applicants or service providers regarding the schools and libraries support mechanism.[8] Your suspension becomes effective upon the earlier of your receipt of this letter or publication of notice in the **Federal Register**.[9]

Suspension is immediate pending the Bureau's final debarment determination. In accordance with the Commission's debarment rules, you may contest this suspension or the scope of this suspension by filing arguments in opposition to the suspension, with any relevant documentation. Your request must be received within 30 days after you receive this letter or after notice is published in the **Federal Register**, whichever comes first.[10] Such requests, however, will not ordinarily be granted.[11] The Bureau may reverse or limit the scope of suspension only upon a finding of extraordinary circumstances.[12] Absent extraordinary circumstances, the Bureau will decide any request for reversal or modification of suspension within 90 days of its receipt of such request.[13]

II. Initiation of Debarment Proceedings

Your guilty plea to criminal conduct in connection with the E–Rate program, in addition to serving as a basis for immediate suspension from the program, also serves as a basis for the initiation of debarment proceedings against you. Your conviction falls within the categories of causes for debarment defined in section 54.521(c) of the Commission's rules.[14] Therefore, pursuant to section 54.521(a)(4) of the Commission's rules, your conviction requires the Bureau to commence debarment proceedings against you.

As with your suspension, you may contest debarment or the scope of the proposed debarment by filing arguments and any relevant documentation within 30 calendar days of the earlier of the receipt of this letter or of publication in the **Federal Register**.[15]

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[7] *See id.* The Bureau also debars Mrs. Evelyn Myers Scott from the E-Rate program. *See* Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mrs. Evelyn Myers Scott, Notice of Debarment, DA 08–49 (Inv. & Hearings Div., Enf. Bur. rel. Jan. 9, 2008).

[8] *See id.*

[9] *Id.* at 18618; 47 CFR 54.521(c).

[10] *See* Notice of Suspension, 22 FCC Rcd at 18619.

[11] *See* 47 CFR 54.521(a)(1), 54.521(a)(5), 54.521(d); Notice of Suspension, 22 FCC Rcd at 18619.

[1] Any further reference in this letter to ''your conviction'' refers to your May 2, 2007 guilty plea and subsequent conviction of one count of conspiracy to defraud the United States and one count of bribery. *United States* v. *Arthur R. Scott,* Criminal Docket No. 1:07–CR–139–CC–01, Plea Agreement (N.D.Ga. filed May 2, 2007 and entered May 7, 2007) (''*Scott Plea Agreement*''); *United States* v. *Arthur R. Scott,* 1:07–CR–139–CC–01, Judgment (N.D.Ga. filed and entered Oct. 2, 2007) (''*Scott Judgment*'').

[2] 47 CFR 54.521; 47 CFR 0.111(a)(14) (delegating to the Enforcement Bureau authority to resolve universal service suspension and debarment proceedings pursuant to 47 CFR 54.521).

[3] *See Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9225, ¶ 66 (2003) (''*Second Report and Order*''). The Commission's debarment rules define a ''person'' as ''[a]ny individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however, organized.'' 47 CFR 54.521(a)(6).

[4] *See generally United States* v. *Arthur R. Scott and Evelyn Myers Scott a/k/a Evelyn M. Myers,* Criminal Docket No. 1:07–CR–139, Information (N.D.Ga.. filed Apr. 30, 2007 and entered May 3, 2007) ('' *Scott and Myers Scott Information*''); *Scott Plea Agreement* at 1.

[5] *Scott and Myers Scott Information* at 1–9. See also Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, to Evelyn M. Scott, DA 07–4335, dated October 18, 2007.

[6] *See Scott Judgment* at 5; *see also Scott Plea Agreement* at 4.

[7] 47 CFR 54.521(a)(4). *See Second Report and Order,* 18 FCC Rcd at 9225–9227, ¶¶ 67–74 (2003).

[8] *Second Report and Order,* 18 FCC Rcd at 9225, ¶ 67; 47 U.S.C. 254; 47 CFR 54.502–54.503; 47 CFR 54.521(a)(4).

[9] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 69; 47 CFR 54.521(e)(1).

[10] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(4).

[11] *Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70.

[12] 47 CFR 54.521(e)(5).

[13] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5), 54.521(f).

[14] Causes for suspension and debarment are the conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism.'' 47 CFR 54.521(c). Such activities ''include the receipt of funds or discounted services through the schools and libraries support mechanism, or consulting with, assisting, or advising applicants or service providers regarding schools and libraries support mechanism described in this section ([47 CFR] 54.500 *et seq.*).'' 47 CFR 54.521(a)(1).

[15] *See Second Report and Order,* 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(2)(i), 54.521(e)(3).

Absent extraordinary circumstances, the Bureau will debar you.[16] Within 90 days of receipt of any opposition to your suspension and proposed debarment, the Bureau, in the absence of extraordinary circumstances, will provide you with notice of its decision to debar.[17] If the Bureau decides to debar you, its decision will become effective upon the earlier of your receipt of a debarment notice or publication of the decision in the **Federal Register**.[18]

If and when your debarment becomes effective, you will be prohibited from participating in activities associated with or related to the schools and libraries support mechanism for three years from the date of debarment.[19] The Bureau may, if necessary to protect the public interest, extend the debarment period.[20]

Please direct any response, if by messenger or hand delivery, to Marlene H. Dortch, Secretary, Federal Communications Commission, 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002, to the attention of Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4–C330, Federal Communications Commission. If sent by commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail), the response should be sent to the Federal Communications Commission, 9300 East Hampton Drive, Capitol Heights, Maryland 20743. If sent by first-class, Express, or Priority mail, the response should be sent to Diana Lee, Attorney Advisor, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554, with a copy to Vickie Robinson, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW., Room 4–C330, Washington, DC 20554. You shall also transmit a copy of the response via e-mail to *diana.lee@fcc.gov* and to *vickie.robinson@fcc.gov*.

If you have any questions, please contact Ms. Lee via mail, by telephone at (202) 418–1420 or by e-mail at *diana.lee@fcc.gov*. If Ms. Lee is unavailable, you may contact Ms. Vickie Robinson, Assistant Chief, Investigations and Hearings Division, by telephone at (202) 418–1420 and by e-mail at *vickie.robinson@fcc.gov*.

Sincerely yours,
Hillary S. DeNigro,
Chief, Investigations and Hearings Division, Enforcement Bureau.
cc: Kristy Carroll, Esq., Universal Service Administrative Company (via e-mail), Aaron M. Danzig, Esq., Assistant United States Attorney.

[FR Doc. E8–2812 Filed 2–13–08; 8:45 am]

BILLING CODE 6712–01–P

[16] *Second Report and Order*, 18 FCC Rcd at 9227, ¶ 74.

[17] *See id.*, 18 FCC Rcd at 9226, ¶ 70; 47 CFR 54.521(e)(5).

[18] *Id.* The Commission may reverse a debarment, or may limit the scope or period of debarment upon a finding of extraordinary circumstances, following the filing of a petition by you or an interested party or upon motion by the Commission. 47 54.521(f).

[19] *Second Report and Order*, 18 FCC Rcd at 9225, ¶ 67; 47 CFR 54.521(d), 54.521(g).

[20] *Id.*

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE & TIME: Wednesday, February 20, 2008 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, Section 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PREVIOUSLY SCHEDULED OPEN MEETING: Thursday, February 21, 2008. This meeting has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.

[FR Doc. 08–736 Filed 2–12–08; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

[Notice 2008–4]

Price Index Increases for Expenditure Limitations

AGENCY: Federal Election Commission.

ACTION: Notice of expenditure limitation increases.

SUMMARY: As mandated by provisions of the Bipartisan Campaign Reform Act of 2002 (''BCRA''), the Federal Election Commission (''FEC'' or ''the Commission'') is adjusting certain expenditure limitations set forth in the Federal Election Campaign Act of 1971, as amended (''FECA'' or ''the Act''), to account for increases in the consumer price index. Additional details appear in the supplemental information that follows.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; (202) 694–1100 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, as amended by the Bipartisan Campaign Reform Act of 2002 [1], coordinated party expenditure limits (2 U.S.C. 441a(d)(2), (3)(A) and (B)) are adjusted annually by the increase in the consumer price index. *See* 2 U.S.C. 441a(c)(1), 11 CFR 109.32 and 11 CFR 110.17. The Commission is publishing this notice to announce these limits for 2008.

Coordinated Party Expenditure Limits for 2008

Under 2 U.S.C. 441a(c), the Commission must adjust the expenditure limitations established by 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, state party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974).

1. Expenditure Limitation for House of Representatives in States with More Than One Congressional District.

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives in States with more than one congressional district. This limitation also applies to those States that elect individuals to the office of Delegate or Resident Commissioner.[2] The formula used to calculate the expenditure limitation in such States multiplies the base figure of $10,000 by the price index (4.205), rounding to the nearest $100. *See* 2 U.S.C. 441a(d)(3)(B) and 11 CFR 109.32(b). Based upon this formula, the expenditure limitation for 2008 general elections for House candidates in these States is $42,100.

[1] Public Law No. 107–155, 116 Stat. 81 (Mar. 27, 2002).

[2] Currently, these States include the District of Columbia, the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, and the United States Virgin Islands. *See http://www.house.gov/house/MemberWWW_by_State.shtml* and *http://about.dc.gov/statehood.asp.*

2. Expenditure Limitation for Senate and for House of Representatives in States With Only One Congressional District

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate or in the House of Representatives in States with only one congressional district. The formula used to calculate this expenditure limitation considers not only the price index but also the voting age population (''VAP'') of the state. The VAP of each state is published annually in the **Federal Register** by the Department of Commerce. 11 CFR 110.18. The general election expenditure limitation is the greater of: the base figure ($20,000) multiplied by the price index (which totals $84,100); or $0.02 multiplied by the VAP of the state, multiplied by the price index. Amounts are rounded to the nearest $100. *See* 2 U.S.C. 441a(d)(3)(A) and 11 CFR 109.32(b). The chart below provides the state-by-state breakdown of the 2008 general election expenditure limitations for Senate elections. The expenditure limit for 2008 House elections in states with only one congressional district [3] is $84,100.

SENATE GENERAL ELECTION EXPENDITURE LIMITATIONS—2008 ELECTIONS

State	VAP (in thousands)	VAP × .02 × the price index (4.205)	Senate expenditure limit (the greater of the amount in column 3 or $84,100)
Alabama	3,504	$294,700	$294,700
Alaska	501	42,100	84,100
Arizona	4,669	392,700	392,700
Arkansas	2,134	179,500	179,500
California	27,169	2,284,900	2,284,900
Colorado	3,669	308,600	308,600
Connecticut	2,682	225,600	225,600
Delaware	659	55,400	84,100
Florida	14,208	1,194,900	1,194,900
Georgia	7,013	589,800	589,800
Hawaii	998	83,900	84,100
Idaho	1,092	91,800	91,800
Illinois	9,653	811,800	811,800
Indiana	4,759	400,200	400,200
Iowa	2,277	191,500	191,500
Kansas	2,080	174,900	174,900
Kentucky	3,238	272,300	272,300
Louisiana	3,214	270,300	270,300
Maine	1,038	87,300	87,300
Maryland	4,260	358,300	358,300
Massachusetts	5,017	421,900	421,900
Michigan	7,625	641,300	641,300
Minnesota	3,937	331,100	331,100
Mississippi	2,150	180,800	180,800
Missouri	4,454	374,600	374,600
Montana	738	62,100	84,100
Nebraska	1,328	111,700	111,700
Nevada	1,905	160,200	160,200
New Hampshire	1,018	85,600	85,600
New Jersey	6,622	556,900	556,900
New Mexico	1,470	123,600	123,600
New York	14,884	1,251,700	1,251,700
North Carolina	6,843	575,500	575,500
North Dakota	497	41,800	84,100
Ohio	8,715	732,900	732,900
Oklahoma	2,718	228,600	228,600
Oregon	2,885	242,600	242,600
Pennsylvania	9,646	811,200	811,200
Rhode Island	825	69,400	84,100
South Carolina	3,348	281,600	281,600
South Dakota	599	50,400	84,100
Tennessee	4,685	394,000	394,000
Texas	17,281	1,453,300	1,453,300
Utah	1,829	153,800	153,800
Vermont	490	41,200	84,100
Virginia	5,886	495,000	495,000
Washington	4,932	414,800	414,800
West Virginia	1,425	119,800	119,800
Wisconsin	4,280	359,900	359,900
Wyoming	397	33,400	84,100

[3] Currently, these states are: Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming. *See http://www.house.gov/house/MemberWWW_by_State.shtml.*

3. Expenditure Limitation for President

The national party committees have an expenditure limitation for their general election nominee for President. The formula used to calculate the Presidential expenditure limitation considers not only the price index but also the total VAP of the United States. The Department of Commerce also publishes the total VAP of the United States annually in the **Federal Register**. 11 CFR 110.18. The formula used to calculate this expenditure limitation is $0.02 multiplied by the total VAP of the United States (227,719,424), multiplied by the price index. Amounts are rounded to the nearest $100. *See* 2 U.S.C. 441a(d)(2) and 11 CFR 109.32(a). Based upon this formula, the expenditure limitation for 2008 Presidential nominees is $19,151,200.

Contribution Limitations for Individuals, Non-Multicandidate Committees and for Certain Political Party Committees Giving to U.S. Senate Candidates for the 2007–2008 Election Cycle

For the convenience of the readers, the Commission is also republishing the contribution limitations for individuals, non-multicandidate committees and for certain political party committees giving to U.S. Senate candidates for the 2007–2008 election cycle:

Statutory provision	Statutory amount	2007–2008 limitation
2 U.S.C. 441a(a)(1)(A)	$2,000	$2,300.
2 U.S.C. 441a(a)(1)(B)	$25,000	$28,500.
2 U.S.C. 441a(a)(3)(A)	$37,500	$42,700.
2 U.S.C. 441a(a)(3)(B)	$57,500 (of which no more than $37,500 may be attributable to contributions to political committees that are not political committees of national political parties).	$65,500 (of which no more than $42,700 may be attributable to contributions to political committees that are not political committees of national political parties).
2 U.S.C. 441a(h)	$35,000	$39,900.

Dated: February 7, 2008.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 08–695 Filed 2–13–08; 8:45 am]

BILLING CODE 6715–01–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 March 11, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Bank Iowa Corporation, West Des Moines, Iowa; to acquire up to 100 percent of Hansen Bancorporation, Lawler, Iowa, and thereby indirectly acquire State Bank of Lawler, New Hampton, Iowa.

Board of Governors of the Federal Reserve System, February 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–2765 Filed 2–13–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 11, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First NBC Bank Holding Company, New Orleans, Louisiana; to merge with Dryades Bancorp, Inc., and thereby acquire Dryades Savings Bank, F.S.B., both of New Orleans, Louisiana, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, February 11, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–2766 Filed 2–13–07; 8:45 am]

BILLING CODE 6210–01–S

GOVERNMENT ACCOUNTABILITY OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, February 25, 2008, from 8:30 a.m. to 4:30 p.m., in room 7C13 of the Government Accountability Office building, 441 G Street, NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues associated with the independence standard and other issues identified by the Council. The meeting is open to the public. Members of the public will be provided an opportunity to address the Council with a brief (five minute) presentation in the afternoon.

Any interested person who plans to attend the meeting as an observer must contact Jennifer Allison, Council Administrator, 202–512–3423. A form of picture identification must be presented to the GAO Security Desk on the day of the meeting to obtain access to the GAO building. For further information, please contact Ms. Allison. Please check the Government Auditing Standards Web page (*http://www.gao.gov/govaud/ybk01.htm*) one week prior to the meeting for a final agenda.

[Pub. L. 67–13, 42 Stat. 20 (June 10, 1921)]

Dated: February 6, 2008.

Paula M. Rascona,

Director, Financial Management and Assurance.

[FR Doc. 08–641 Filed 2–13–08; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics

AGENCY: Department of Health and Human Services, Office of Public Health and Science, The President's Council on Bioethics.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics (Edmund D. Pellegrino, MD, Chairman) will hold its thirty-second meeting, at which it will discuss and hear presentations on (1) newborn screening and (2) the problems of cost, access, and quality in American health care. The Council will also unveil its most recent publication, *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics.* Subjects discussed at past Council meetings (although not on the agenda for the March 2008 meeting) include: therapeutic and reproductive cloning, assisted reproduction, reproductive genetics, neuroscience, aging retardation, organ transplantation, personalized medicine, and lifespan-extension. Publications issued by the Council to date include: *Human Cloning and Human Dignity: An Ethical Inquiry* (July 2002); *Beyond Therapy: Biotechnology and the Pursuit of Happiness* (October 2003); *Being Human: Readings from the President's Council on Bioethics* (December 2003); *Monitoring Stem Cell Research* (January 2004), *Reproduction and Responsibility: The Regulation of New Biotechnologies (March 2004), Alternative Sources of Human Pluripotent Stem Cells: A White Paper* (May 2005), *Taking Care: Ethical Caregiving in Our Aging Society* (September 2005), and *Human Dignity and Bioethics: Essays Commissioned by the President's Council on Bioethics* (March 2008). Reports on (a) controversies in the determination of death, and (b) organ procurement, transplantation, and allocation are forthcoming.

DATES: The meeting will take place Thursday, March 6, 2008, from 9 a.m. to 5 p.m., ET; and Friday, March 7, 2008, from 8:30 a.m. to 12 noon, ET.

ADDRESSES: Hotel Palomar Arlington, 1121 North 19th Street, Arlington, VA 22209. Phone 703–351–9170.

FOR FURTHER INFORMATION CONTACT: Ms. Diane M. Gianelli, Director of Communications, The President's Council on Bioethics, 1425 New York Avenue, NW., Suite C100, Washington, DC 20005. *Telephone:* 202/296–4669. E-mail: *info@bioethics.gov.* Web site: *http://www.bioethics.gov.*

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted at *http://www.bioethics.gov.* The Council encourages public input, either in person or in writing. At this meeting, interested members of the public may address the Council, beginning at 11:45 am, on Friday, March 7. Comments are limited to no more than five minutes per speaker or organization. As a courtesy, please inform Ms. Diane M. Gianelli, Director of Communications, in advance of your intention to make a public statement, and give your name and affiliation. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of her contact addresses given above.

Dated: February 1, 2008.

F. Daniel Davis,

Executive Director, The President's Council on Bioethics.

[FR Doc. E8–2779 Filed 2–13–08; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis (ACET)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5 p.m., March 26, 2008; 8:30 a.m.–2 p.m., March 27, 2008.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333, Telephone: (404) 639–8317.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.

Matters To Be Discussed: Agenda items include issues pertaining to Lessons Learned: Potential for Transmission of Tuberculosis during Air Travel; Tuberculosis as a Cause of Death; and Update on Nucleic Acid Amplification Testing and Second Line Drug Susceptibility Guidelines and other related tuberculosis issues. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Margie Scott-Cseh, Coordinating Center for Infectious Diseases, Strategic Business Unit, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, Telephone: (404) 639–8317.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 6, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E8–2796 Filed 2–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC)

In accordance with section 10(a)(2)of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–5p.m., March 4, 2008. 8:30 a.m.–1p.m., March 5, 2008.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Tom Harkin Global Community Center, Building 19, Atlanta, Georgia 30333, Telephone: (404) 639–1717.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program priorities including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Matters To Be Discussed: The agenda will include a review and discussion of the National Breast and Cervical Cancer Early Detection Program components; and related policies and emerging issues.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Debra Younginer, Executive Secretary, BCCEDCAC, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop K–57, Chamblee, Georgia 30316, Telephone: (770) 488–1074.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 6, 2008.

Elaine L. Baker,

Director, Management Analysis and Service Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. E8–2795 Filed 2–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Monitoring and Evaluation of Malaria Activities in the Greater Mekong Sub-Region, Request for Applications (RFA) CK08–003

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.–2 p.m., March 13, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Monitoring and Evaluation of Malaria Activities in the Greater Mekong Sub-Region, RFA CK08–003.''

Contact Person For More Information: Christine Morrison, PhD, Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–3098.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 7, 2008.

Elaine L. Baker

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–2793 Filed 2–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Natural History and Prevention of Viral Hepatitis Among Alaska Natives, Request for Applications (RFA) PS08–004

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 12 p.m.–4 p.m., March 24, 2008 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of ''Natural History and Prevention of Viral Hepatitis Among Alaska Natives, RFA PS08–004.''

Contact Person for More Information: Shree Marshall Williams, PhD, M.Sc., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone: (404) 639–4896.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 8, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–2799 Filed 2–13–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office of the Director, Office of Strategy and Innovation, Office of Minority Health and Health Disparities

In accordance with Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, Consultation and Coordination with Indian Tribal Governments, the CDC announces the following meeting:

Name: Tribal Consultation Advisory Committee (TCAC) Meeting, An

Overview and Orientation to CDC, and the Biannual Tribal Consultation Session.

Times and Dates:

8 a.m.–5:30 p.m., February 26, 2008; TCAC Meeting.

8 a.m.–5:30 p.m., February 27, 2008; An Overview and Orientation to CDC.

8 a.m.–5:30 p.m., February 28, 2008; Biannual Tribal Consultation Session.

Place: Centers for Disease Control (CDC), 1600 Clifton Road NE, Atlanta, GA 30333, Telephone: 404–498–2343. Roybal Campus—Building 19, Room 206 Auditorium A.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: CDC established the Tribal Consultation Policy in October of 2005 with the primary purpose of providing guidance across the agency to work effectively with American Indian/Alaska Native (AI/AN) communities and organizations to enhance AI/AN access to CDC programs. In October of 2005, an Agency Advisory Committee (CDC/ATSDR Tribal Consultation Advisory Committee—TCAC) was established to provide a complementary venue wherein tribal representatives and CDC staff will exchange information about public health issues in Indian Country, identifying urgent public health issues in Indian country, and discuss collaborative approaches to these issues. Within the CDC Consultation Policy, it is stated that CDC will conduct Government-to-government consultation with elected tribal officials or their designated representatives and also confer with tribal and Alaska Native organizations and AI/AN urban and rural communities before taking actions and/or making decisions that affect them. Consultation is an enhanced form of communication that emphasizes trust, respect, and shared responsibility. It is an open and free exchange of information and opinion among parties that leads to mutual understanding and comprehension. CDC believes that consultation is integral to a deliberative process that results in effective collaboration and informed decision making with the ultimate goal of reaching consensus on issues. Although formal responsibility for the agency's overall Government-to-government consultation activities rests within the Office of the Director, Coordinating Centers and Coordinating Offices, and center leadership shall actively participate in TCAC meetings and HHS-sponsored regional and national tribal consultation sessions as frequently as possible.

Matters To Be Discussed: The TCAC will convene their quarterly committee meeting with discussions and presentations from various CDC senior leadership on activities and areas identified by tribal leaders as priority public health issues. The Tribal Leaders Orientation Agenda has been established in response to tribal leaders' request to learn more about the CDC and its potential resources available. The Biannual Tribal Consultation Session will engage CDC Senior leadership from the Office of the Director and various CDC Offices and National Centers including the Financial Management Office, National Center for Environmental Health and the Agency for Toxic Substances, Coordinating Office for Terrorism and Preparedness and Emergency Response, National Center for Health Marketing, the Office of Chief of Public Health Practice, and the Office of Enterprise Communications. Opportunities will be provided during the Consultation Session for tribal testimony. Tribal Leaders are encouraged to submit written testimony by COB on February 8, 2008 to the contact person below. Depending on the time available it may be necessary to limit the time of each presenter.

Please reference this web link *http://www.cdc.gov/omhd/TCAC/AAC.html* to review information about the TCAC and CDC's tribal Consultation Policy.

For Further Information Contact: CAPT Pelagie (Mike) Snesrud, Senior Tribal Liaison for Policy and Evaluation, Office of Minority Health and Health Disparities, 1600 Clifton Road NE., MS E–67, Atlanta, Georgia 30333, telephone (404) 498–2343, fax (404) 498–2355, e-mail: *pws8@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and Agency for Toxic Substances and Disease Registry.

Dated: February 6, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–2789 Filed 2–13–08; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; comment request; The REDS-II Donor Iron Status Evaluation (RISE) Study

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 Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* The REDS-II Donor Iron Status Evaluation (RISE) Study. *Type of Information Collection Request:* Revisions due to program adjustments. *Need and Use of Information Collection:* Although the overall health significance of iron depletion in blood donors is uncertain, iron depletion leading to iron deficient erythropoiesis and lowered hemoglobin levels results in donor deferral and, occasionally, in mild iron deficiency anemia. Hemoglobin deferrals represent more than half of all donor deferral, deferring 16% of women.

Several cross sectional studies of blood donors, using older measures of iron status in blood donors have indicated that female sex, frequent donation and not taking iron supplements are predictors of iron depletion. However, none of these studies have included racial/ethnic, anthropomorphic, or behavioral factors and none have evaluated the impact of newly discovered iron protein polymorphisms. The RISE Study is a longitudinal study of iron status in two cohorts of blood donors: A first time/reactivated donor cohort in which baseline iron and hemoglobin status can be assessed without the influence of previous donations, and a frequent donor cohort, where the cumulative effect of additional frequent blood donations can be assessed. Each cohort's donors will donate blood and provide evaluation samples during the study period.

The primary goal of the study is to evaluate the effects of blood donation intensity on iron and hemoglobin status and assess how these are modified as a function of baseline iron/hemoglobin measures, demographic factors, and reproductive and behavioral factors. Hemoglobin levels, a panel of iron protein, red cell and reticulocyte indices

will be measured at baseline and at a final follow-up visit 15–24 months after the baseline visit. A DNA sample will be obtained once at the baseline visit to assess three key iron protein polymorphisms. Donors will also complete a self-administered survey assessing past blood donation, smoking history, use of vitamin/mineral supplements, iron supplements, aspirin, frequency of heme rich food intake, and, for females, menstrual status and pregnancy history at these two time points. This study aims to identify the optimal laboratory measures that would predict the development of iron depletion, hemoglobin deferral, and/or iron deficient hemoglobin deferral in active whole blood and double red cell donors at subsequent blood donations. The data collected will help evaluate hemoglobin distributions in the blood donor population (eligible and deferred donors) and compare them with NHANES data. Other secondary objectives include elucidating key genetic influences on hemoglobin levels and iron status in a donor population as a function of donation history; and establishing a serum and DNA archive to evaluate the potential utility of future iron studies and genetic polymorphisms.

This study will develop better predictive models for iron depletion and hemoglobin deferral (with or without iron deficiency) in blood donors; allow for the development of improved donor screening strategies and open the possibility for customized donation frequency guidelines for individuals or classes of donors; provide important baseline information for the design of targeted iron supplementation strategies in blood donors, and improved counseling messages to blood donors regarding diet or supplements; and by elucidating the effect of genetic iron protein polymorphisms on the development of iron depletion, enhance the understanding of the role of these proteins in states of iron stress, using frequent blood donation as a model.

Frequency of Response: Twice. *Affected Public:* Individuals. *Type of Respondents:* Adult Blood Donors. The annual reporting burden is a follows: *Estimated Number of Respondents:* Baseline visit: 2,340, Follow up Visit: 1,530; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* Baseline Visit: 0.37, Follow up Visit: 0.17; and *Estimated Total Annual Burden Hours Requested:* Baseline visit: 866, Follow up Visit: 260. The annualized cost to respondents is estimated at: Baseline Visit: $15,588, Follow up Visit: $4,680 (based on $18 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Blood donors at Baseline Visit	2,340	1	0.37	866
Blood donors at Follow-up Visit	1,530	1	0.17	260
Total				1,126

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address 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 the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information 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. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Suite 10042, 6701 Rockledge Drive, Bethesda, MD 20892–7950, or call 301–435–0075, or E-mail your request to *nemog@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: February 4, 2008.

George Nemo,

NHLBI Project Officer, NHLBI, National Institutes of Health.

[FR Doc. E8–2748 Filed 2–13–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Cooperative Research and Development Agreement (CRADA) Opportunity With the National Heart Lung and Blood Institute and Licensing Opportunity for Development of Multi-Domain Amphipathic Helical Peptides for the Treatment of Cardiovascular Disease

AGENCY: National Institutes of Health, PHS, HHS.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended, and in accordance with 35 U.S.C. 207 and 37 CFR Part 404, the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (HHS) seeks a Cooperative Research and Development Agreement (CRADA) and/or license(s) with a pharmaceutical or biotechnology company to develop and commercialize amphipathic helical peptides potentially useful for the treatment and prevention of cardiovascular disease. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, methods of treatment or prevention that may result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or non-exclusive commercialization license to subject inventions arising under the CRADA defined by the CRADA Research Plan, subject to any pre-existing licenses already issued for other fields of use, and can apply for background licenses to the existing patent applications encompassed within HHS Reference Nos. E–114–2004/0–US–01 (United States Patent Application

Serial No. 11/577,259), E–114–2004/0–AU–03 (Australian Patent Application Serial No. 2005295640), E–114–2004/0–CA–04 (Canadian Patent Application No. 2584048), E–114–2004/0–EP–05 (European Patent Application No. 05815961.7) and E–114–2004/0–JP–06 (Japanese Patent Application No. 2007–536912) titled: Multi-Domain Amphipathic Helical Peptides and Methods of Their Use.

DATES: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential preliminary CRADA proposals, preferably two pages or less, must be submitted to the NHLBI on or before April 14, 2008. Guidelines for preparing final CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

There is no deadline by which license applications must be received by the Office Technology Transfer however applicants are encouraged to respond on or before April 14, 2008. This notice replaces that published in the **Federal Register** on May 11, 2005 (70 FR 24832).

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Denise Crooks, Office of Technology Transfer and Development, NHLBI 6705 Rockledge Drive, MSC 7992, Bethesda, MD 20892 (phone: 301–402–5579, Fax: 391–594–3080, E-mail: *Crooksd@nhlbi.nih.gov*).

Scientific Inquiries should be directed to Dr. Alan T. Remaley, NHLBI, 10 Center Drive, Building 10, Room 2C–433, MSC 1508, Bethesda, MD 20892 (phone: 301–402–9796; fax: 301–402–1885; E-mail: *aremaley1@cc.nih.gov*).

Licensing inquiries and requests for license application should be directed to Ms. Fatima Sayyid, Technology Licensing Specialist, Office of Technology Transfer, NIH, 6011 Executive Blvd., Suite 325, Rockville, MD, 20852 (phone: 301–435–4521, Fax: 301–402–0220, E-mail: *Fatima.Sayyid@nih.hhs.gov*).

SUPPLEMENTARY INFORMATION:

Technology Available

HHS scientists within the Lipoprotein Metabolism Section (LMS), NHLBI, have discovered a novel class of non-hemolytic amphipathic synthetic peptides that are specific for effluxing excess cellular cholesterol by the ABCA1 transporter. These agents have been shown to significantly inhibit the progression of atherosclerosis in a mouse model of cardiovascular disease. Details are noted in HHS Reference #s E–114–2004/0–US–01 (United States Patent Application Serial No. 11/577,259), E–114–2004/0–AU–03 (Australian Patent Application Serial No. 2005295640), E–114–2004/0–CA–04 (Canadian Patent Application No. 2584048), E–114–2004/0–EP–05 (European Patent Application No. 05815961.7) and E–114–2004/0–JP–06 (Japanese Patent Application No. 2007–536912) titled: Multi-Domain Amphipathic Helical Peptides and Methods of Their Use. They are available for review under an appropriate Confidential Disclosure Agreement.

Technology Sought

Accordingly, HHS now seeks collaborative arrangements to provide more extensive biological and pharmacological evaluation of both current and any new amphipathic peptides that are being developed within the Lipoprotein Metabolism Section of NHLBI. The ultimate purpose of the collaboration would be to advance the most promising agents into clinical trials for the prevention and regression of cardiovascular disease. For collaboration with the private sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide for equitable distribution of intellectual property rights developed under the collaboration. CRADA aims will include rapid publication of research results as well as full and timely exploitation of commercial opportunities.

NHLBI and Collaborator Responsibilities

The role of LMS, NHLBI in this CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Perform in conjunction with Collaborator *in vitro* studies to identify novel peptides.
3. Perform in conjunction with Collaborator animal studies on peptides with anti-atherosclerotic properties.
4. Provide the Collaborator with sequences of any novel peptides for future pharmaceutical development.
5. Planning and conducting research and clinical studies and interpreting research results.
6. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning scientific and clinical research studies and interpreting research results.
3. Providing some financial support for CRADA-related research as outlined in the CRADA Research Plan.
4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NHLBI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to on-going research and development.

2. Expertise and experience in the following areas: Peptide design and synthesis, performance of preclinical studies including animal model studies of atherosclerosis, animal toxicology studies, knowledge of GMP grade production and scale up and lipid reconstitution of synthetic peptides, and design, U.S. Food and Drug Administration regulatory filings, and performance of clinical trials. The demonstration of adequate resources to perform the research, development and commercialization of this technology (e.g. facilities, personnel, expertise and funds) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborators proposal.

3. The willingness to commit best efforts and demonstrated resources to the research, development and commercialization of this technology.

4. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

5. The willingness to cooperate with the National Heart Lung and Blood Institute in the timely publication of research results.

6. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or non-exclusive license to the CRADA Collaborator when the Government employee is the sole or joint inventor.

Dated: February 7, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–2750 Filed 2–13–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Use of Amyloid Proteins as Vaccine Scaffolds

Description of Technology: Amyloid proteins are composed of peptides whose chemical properties are such that they spontaneously aggregate *in vitro* or *in vivo*, assuming parallel or antiparallel beta sheet configurations. Amyloid proteins can arise from peptides which, though differing in primary amino acid sequences, assume the same tertiary and quaternary structures. The amyloid structure presents a regular array of accessible N-termini of the peptide molecules.

Claimed in this application are compositions and methods for use of amyloid proteins as vaccine scaffolds, on which peptide determinants from microorganisms or tumors may be presented to more efficiently generate and produce a sustained neutralizing antibody response to prevent infectious diseases or treat tumors. The inventors have arrayed peptides to be optimally immunogenic on the amyloid protein scaffold by presenting antigen using three different approaches. First, the N-terminal ends of the amyloid forming peptides can be directly modified with the peptide antigen of interest; second, the N-termini of the amyloid forming peptides are modified with a linker to which the peptide antigens of interest are linked; and third, the scaffold amyloid may be modified to create a chimeric molecule.

Aside from stability and enhanced immunogenicity, the major advantages of this approach are the synthetic nature of the vaccine and its low cost. Thus, concerns regarding contamination of vaccines produced from cellular substrates, as are currently employed for some vaccines, are eliminated; the robust stability allows the amyloid based vaccine to be stored at room temperature for prolonged periods of time; and the inexpensive synthetic amino acid starting materials, and their rapid spontaneous aggregation *in vitro* should provide substantial cost savings over the resource and labor-intensive current vaccine production platforms.

Application: Immunization to prevent infectious diseases or treat chronic conditions or cancer.

Developmental Status: Vaccine candidates have been synthesized and preclinical studies have been performed.

Inventors: Amy Rosenberg (CDER/FDA), James E. Keller (CBER/FDA), Robert Tycko (NIDDK).

Patent Status: U.S. Provisional Application No. 60/922,131 filed 06 Apr 2007 (HHS Reference No. E–106–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Peter A. Soukas, JD; 301–435–4646; *soukasp@mail.nih.gov*.

Collaborative Research Opportunity: The FDA, Division of Therapeutic Proteins (CDER) and Office of Vaccines, Division of Bacterial Products (CBER) is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize amyloid based vaccines for prevention of infectious disease or treatment of malignant states. Please contact Amy Rosenberg at *amy.rosenberg@fda.hhs.gov* or (301) 827–1794 for more information.

Inhibiting HIV Infection Using Integrin Antagonists

Description of Technology: Infection with HIV depletes and impairs CD4 cells, a key component of the immune system. Effective therapies such as highly active antiretroviral therapy (HAART) have focused on preserving CD4 cells. However, long term HAART has significant toxicity associated with it. The current technology describes the use of integrin antagonists as an alternative to treating or preventing HIV infection and replication. Specifically, α4 integrin plays a role in directing lymphocytes to the primary site of HIV replication. Inhibition of the interaction of α4β1 or α4β7 with gp120 can therefore be important in the development of effective HIV treatments.

Applications: Inhibiting HIV infection; Inhibiting HIV replication.

Development Status: In vitro data.

Inventors: James Arthos, Diana Goode, Claudia Cicala, and Anthony Fauci (NIAID).

Patent Status:

U.S. Patent Application No. 60/873,884 filed 07 Dec 2006 (HHS Reference No. E–055–2007/0–US–01)

U.S. Patent Application No. 60/920,880 filed 03 Mar 2007 (HHS Reference No. E–055–2007/1–US–01)

U.S. Patent Application No. 60/957,140 filed 21 Aug 2007 (HHS Reference No. E–055–2007/2–US–01)

PCT Patent Application No. PCT/US2007/086663 filed 06 Dec 2007 (HHS Reference No. E–055–2007/3–PCT–01)

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Susan Ano, PhD; 301–435–5515; *anos@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID Laboratory of Immunoregulation is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Dr. James Arthos at 301–435–2374 for more information.

Coacervate Microparticles Useful for the Sustained Release Administration of Therapeutics Agents

Description of Technology: The described technology is a biodegradable microbead or microparticle, useful for the sustained localized delivery of biologically active proteins or other molecules of pharmaceutical interest. The microbeads are produced from several USP grade materials, a cationic polymer, an anionic polymer and a binding component (e.g., gelatin, chondroitin sulfate and avidin), in predetermined ratios. Biologically active proteins are incorporated into preformed microbeads via an introduced binding moiety under nondenaturing conditions.

Proteins or other biologically active molecules are easily denatured, and once introduced into the body, rapidly cleared. These problems are circumvented by first incorporating the protein into the microbead. Microbeads with protein payloads are then introduced into the tissue of interest, where the microbeads remain while degrading into biologically innocuous materials while delivering the protein/drug payload for adjustable periods of time ranging from hours to weeks. This technology is an improvement of the microbead technology described in U.S. Patent No. 5,759,582.

Applications: This technology has two commercial applications. The first is a pharmaceutical drug delivery application. The bead allows the incorporated protein or drug to be delivered locally at high concentration, ensuring that therapeutic levels are reached at the target site while reducing side effects by keeping systemic concentration low. The microbead accomplishes this while protecting the biologically active protein from harsh conditions traditionally encountered during microbead formation/drug formulation.

The microbeads are inert, biodegradable, and allow a sustained release or multiple-release profile of treatment with various active agents without major side effects. In addition, the bead maintains functionality under physiological conditions.

Second, the microbeads and microparticles can be used in various research assays, such as isolation and separation assays, to bind target proteins from biological samples. A disadvantage of the conventional methods is that the proteins become denatured. The denaturation results in incorrect binding studies or inappropriate binding complexes being formed. The instant technology corrects this disadvantage by using a bead created in a more neutral pH environment. It is this same environment that is used for the binding of the protein of interest as well.

Inventor: Phillip F. Heller (NIA).

Patent Status:

U.S. Provisional Application No. 60/602,651 filed 19 Aug 2004 (HHS Reference No. E–116–2004/0–US–01)

PCT Application No. PCT/US2005/026257 filed 25 Jul 2005, which published as WO 2006/023207 on 02 Mar 2006 (HHS Reference No. E–116–2004/0–PCT–02)

U.S. Patent Application No. 11/659,976 filed 12 Feb 2007 (HHS Reference No. E–116–2004/0–US–03)

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Susan O. Ano, PhD; 301/435–5515; *anos@mail.nih.gov*.

Dated: February 7, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–2749 Filed 2–13–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* 301–496–7057; *fax:* 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

New Inhibitors of Multidrug Resistant Proteins Such as ABCG2

Description of Technology: Drug resistance plays a significant role in the failure of cancer chemotherapy. Some proteins such as ABCG2, Pgp and MRP1 that belong to the superfamily of ATP-binding cassette transporters contribute to this process.

Two categories of ABCG2 protein inhibitors—botryllamides, isolated from a marine sponge, and naphthopyrones, isolated from marine sea stars—have been obtained by high-throughput screening of 89,000 natural product extracts from the Natural Products Repository at NCI.

These new compounds serve as potential therapeutic agents for cancer chemotherapy either exclusively or in combination with conventional regimens. The study of structure-activity relationships will help delineate features that would enhance activity and specificity to multiple drug resistant proteins.

Advantages: Increase bioavailability of orally administered drugs; Enhance drug delivery to certain tissues.

Applications: Cancer therapeutics; Cancer stem cell research; Study of structure, function and relevance of MDR in cancer.

Market: Cancer is the second leading cause of death in America, after heart disease. Multiple drug resistance is a significant impediment in the treatment of cancers resulting in poor prognosis. Some cancers with demonstrated high levels of MDR are leukemia, colon, renal, liver, adrenocortical, and pancreatic. Breast, ovarian, sarcoma and small-cell lung cancer show increased MDR on treatment.

This new technology has the potential to increase the effectiveness of conventional chemotherapy and prognosis of cancer.

Developmental Status: Early stage.

Inventors: Curtis J. Henrich *et al.* (NCI).

Patent Status: U.S. Provisional Application No. 60/018,758 filed 03 Jan 2008 (HHS Reference No. E–315–2007/0–US–01).

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: John Stansberry, PhD; 301/435–5236; *stansbej@mail.nih.gov*.

TGF-β Gene Expression Signature in Cancer Prognosis

Description of Technology: Hepatocellular carcinoma (HCC) is the third leading cause of cancer death worldwide, and it is very heterogeneous in terms of its clinical presentation as well as genomic and transcriptomic patterns. This heterogeneity and the lack of appropriate biomarkers have hampered patient prognosis and treatment stratification.

Available for licensing is a novel temporal TGF-β gene expression signature that predicts HCC patient clinical outcomes. Patients with tumors expressing late TGF-β responsive genes had a malignant prognosis and an invasive tumor phenotype as evaluated by decreased survival time, increased tumor recurrence, and vascular invasion rate. Additionally, this signature may also be able to prognose other cancers, including lung cancer.

Applications: Method to diagnose cancer; Method to monitor cancer progression and aid clinicians to choose appropriate therapies; Commercial kits to prognose cancer.

Advantages: Early diagnostic tool to stratify HCC patients to chose more effective treatment.

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

An estimated 1,444,920 new cancer diagnoses in the U.S. in 2007.

Cancer is the second leading cause of death in United States.

It is estimated that the cancer therapeutic market would double to $50 billion a year in 2010 from $25 billion in 2006.

Inventors: Snorri Thorgeirsson (NCI) and Cedric Coulouaran (NCI).

Relevant Publication: Manuscript in press Hepatology 2008.

Patent Status: U.S. Provisional Application No. 60/981,661 filed 22 Oct 2007 (HHS Reference No. E–282–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Laboratory of Experimental Carcinogenesis is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a novel temporal TGF-β gene expression signature that predicts HCC patient clinical outcomes. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A Fold-Back Diabody Format for Diphtheria Toxin-Based Immunotoxins That Can Increase Binding and Potency

Description of Technology: NIH inventors, in collaboration with Scott and White Memorial Hospital inventors, have developed new immunotoxins comprising a mutant diphtheria toxin linked to an anti-prostate specific membrane antigen (PSMA) fold-back diabody. The fold-back diabody construct has a shortened linker region between the heavy and light chains of the antibody variable domain. This construct allows interactions between the longer-linked variable domains while preventing interactions between the shorter-linked variable domains. This results in increased efficiency of epitope recognition and delivery to the appropriate target cells. These immunotoxins can be used for the treatment of cancers that overexpress PMSA, with specific application against prostate cancer.

Applications:

Treatment of primary prostate tumors.

Treatment of metastatic prostate tumors, for which no currently effective treatment exists.

Application against other tumors expressing the PSMA epitope on the tumor neovasculature such as breast cancer.

Advantages:

Increased potency of 10–40-fold resulting from the use of the fold-back diabody construct.

First treatment with applications to metastatic prostate cancer.

Pichia pastoris production process of the fold-back immunotoxin can be used to scale up for GMP production.

Benefits:

Significant social benefit for successfully treating the second leading cause of cancer-related deaths among males in the United States.

Approximately 8 billion USD per year are spent on prostate cancer treatment; a new treatment could procure a significant financial position.

Opportunity to occupy a strong market position through the development of the first treatment of metastatic prostate cancer.

Inventors: David Neville (NIMH) *et al.*

Patent Status: U.S. Patent Application No. 60/953,416 filed 01 Aug 2007 (HHS Reference No. E–268–2007/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: David A. Lambertson, PhD; 301–435–4632; *lambertsond@mail.nih.gov*.

Collaborative Research Opportunity: The National Institute of Mental Health, Laboratory of Molecular Biology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize anti-PSMA fold-back immunotoxins. Please contact David Neville by phone at 301–496–6807 or e-mail *davidn@mail.nih.gov* for more information.

Ribosomal Protein S3 (RPS3), an Essential Component of NF-kB is a Novel and Selective Drug Target

Description of Technology: NF-kB, represented by the p50-p65 heterodimer, is a DNA binding protein complex that has well documented functions in inflammatory or autoimmune diseases. Its potential as a drug target is currently being explored by the pharmaceutical industry.

The present invention describes that ribosomal protein S3 (RPS3) is a novel component of the p65 homodimer and p65-p50 heterodimer DNA binding complex. Experiments confirmed that RPS3 is essential for normal expression of specific NF-kB target genes, including key physiological events that require p65.

Advantages and Applications: A novel and selective target for drug candidates targeting the NF-kB pathway.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Michael J. Lenardo and Fengyi Wan (NIAID).

Patent Status: U.S. Provisional Application No. 60/913,336 filed 23 Apr 2007 (HHS Reference No. E–162–2007/0–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Mojdeh Bahar, J.D.; 301–435–2950; *baharm@mail.nih.gov*.

Collaborative Research Opportunity: The NIAID Laboratory of Immunology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact Dr. Michael Lenardo at 301–496–6754 for more information.

A New Technology for Identification of Genes Expressed in Hypoxia Conditions

Description of Technology: Low concentrations of oxygen (hypoxia) are a major pathophysiological condition conducive for angiogenesis, necessary for tumor growth and metastasis of cancer cells.

A new technology comprising of a vector DNA (pGL2-TK-HRE) that expresses the luciferase gene under the influence of a hypoxia inducible promoter sequence from the nitric oxide synthase gene has been used to transform various human tumor cell lines such as U251–HRE and PC3–HRE. These cells express little to no luciferase under normal oxygen levels, but stably express significantly higher levels under low oxygen levels.

The transformed cell lines can be used to screen and develop drugs and small molecules that inhibit angiogenesis, an attractive target for cancer therapy. The technology can also be used in gene therapy where the therapeutic gene is being expressed under a hypoxia inducible promoter.

Advantages: Quantitative; Robust, stably express luciferase; Can be used in vivo.

Applications: Early detection of angiogenesis; Cancer therapeutics; Gene therapy.

Market: Cancer is the second leading cause of death in America, after heart disease. Every year, more than a million people are diagnosed with cancer. Over 50% of the cases reported in the U.S. affect the lung, breast, prostate and colorectal. Although the number of

deaths reported is declining 553,888 cancer deaths in 2004 compared to 556,902 in 2003, the total number of all cancer deaths among women is rising.

With the help of the new technology early detection, therapy and monitoring of cancer combating efforts would be possible.

Development Status: Developed.

Inventor: Giovanni Melillo (NCI)

Patent Status: HHS Reference No. E–220–2003/0—Research Tool. Patent protection is not being sought for this technology.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: John Stansberry, PhD; 301/435–5236; *stansbej@mail.nih.gov*.

Date: February 6, 2008.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E8–2752 Filed 2–13–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council on March 6, 2008.

The meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CSAP Council's Designated Federal Official, Ms. Tia Haynes (see contact information below), to make arrangements to attend, comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *http://www.samhsa.gov/council/csap/csapnac.aspx,* or by contacting Ms. Haynes. The transcript for the open session will also be available on the SAMHSA Council Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: March 6, 2008. From 9 a.m.–4:30 p.m.: Open.

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Tia Haynes, Designated Federal Official, SAMHSA/CSAP National Advisory Council, 1 Choke Cherry Road, Room 4–1066, Rockville, MD 20857, Telephone: (240) 276–2436, Fax: (240) 276–2430, E-mail: *tia.haynes@samhsa.hhs.gov.*

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–2715 Filed 2–13–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Amspec Services LLC, as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 1818 A Federal Road, Galena Park, TX 77015, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on April 10, 2007. The next triennial inspection date will be scheduled for April 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 08–678 Filed 2–13–08; 8:45 am]

BILLING CODE 9111–14–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Robinson International (USA) Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of Robinson International (USA) Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Robinson International (USA) Inc., 4400 S. Wayside Drive, Suite 107, Houston, TX 77207, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.

DATES: The accreditation and approval of Robinson International (USA) Inc., as commercial gauger and laboratory became effective on May 09, 2007. The next triennial inspection date will be scheduled for May 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 08–673 Filed 2–13–08; 8:45 am]

BILLING CODE 9111–14–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 16642A Jacintoport Blvd., Houston, TX 77015, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternately, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on May 17, 2007. The next triennial inspection date will be scheduled for May 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 08–680 Filed 2–13–08; 8:45 am]

BILLING CODE 9111–14–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Altol Petroleum Product Service, as a Commercial Gauger

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

ACTION: Notice of approval of Altol Petroleum Product Service, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Altol Petroleum Product Service, Road 127 Km. 13.5 Bo. Magas Arriba, Guayanilla, PR 00656, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service required. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Altol Petroleum Product Service, as commercial gauger became effective on September 28, 2007. The next triennial inspection date will be scheduled for September 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 08–651 Filed 2–13–08; 8:45 am]

BILLING CODE 9111–14–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Altol Petroleum Product Service, as a Commercial Gauger.

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

ACTION: Notice of approval of Altol Petroleum Product Service, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Altol Petroleum Product Service, Calle Gregorio Ledesma HN–55 Urb. Levittown, Toa Baja, PR 00949, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov*. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations__support/labs__scientific__svcs/commercial__gaugers/.*

DATES: The approval of Altol Petroleum Product Service, as commercial gauger became effective on July 16, 2007. The next triennial inspection date will be scheduled for July 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue,

NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 08–682 Filed 2–13–08; 8:45 am]

BILLING CODE 9111–14–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2008–0002]

Notice of the Meeting of the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The U.S. Customs and Border Protection (''CBP'') Airport and Seaport Inspections User Fee Advisory Committee (''Advisory Committee'') will meet in open session. The meeting will be open to the public.

DATES: Wednesday, March 5, 2008, 12 p.m. to 4 p.m. Please note that the meeting may close early if all business is finished.

ADDRESSES: The meeting will be held at Conference Room B 1.5–25, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC. Written material, comments, requests to make oral presentations, and requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by Wednesday, February 27, 2008. Comments must be identified by USCBP–2008–0002 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: CBP.Userfeeadvisory committee@dhs.gov.* Include the docket number in the subject line of the message.
- *Facsimile:* (202) 344–1818.
- *Mail:* Ms. Lauren I. Pearce, Office of Finance, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Suite 4.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: Ms. Lauren I. Pearce, Office of Finance, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Suite 4.5A, Washington, DC 20229; *telephone number:* 202–344–3393; *facsimile:* 202–344–1818; *e-mail: CBP.Userfeeadvisorycommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the U.S. Customs and Border Protection Airport and Seaport Inspections User Fee Advisory Committee (hereinafter, ''Advisory Committee''). This Advisory Committee was established pursuant to section 286(k) of the Immigration and Nationality Act (INA), codified at title 8 U.S.C. 1356(k), which references the Federal Advisory Committee Act (5 U.S.C., app.). With the merger of the Immigration and Naturalization Service into the Department of Homeland Security, the Advisory Committee's responsibilities were transferred from the Attorney General to the Commissioner of CBP pursuant to section 1512(d) of the Homeland Security Act of 2002. The Advisory Committee held its first meeting under the direction of CBP on October 22, 2003 (see 68 FR 56301, September 30, 2003). Among other things, this Advisory Committee advises the Department of Homeland Security via the Commissioner of CBP on issues related to the performance of airport and seaport inspections involving agriculture, customs, or immigration based concerns. This advice includes, but is not limited to, issues such as the time period during which such services should be performed and the proper number and deployment of inspection officers. Additionally, this advice includes the level and the appropriateness of the following fees assessed for CBP services: The immigration user fee pursuant to 8 U.S.C. 1356(d), the customs inspection user fee pursuant to 19 U.S.C. 58c(a)(5), and the agriculture inspection user fee pursuant to 21 U.S.C. 136a.

The sixth meeting of the Advisory Committee will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

This meeting is open to the public. Public participation in the deliberations is welcome; however, please note that matters outside of the scope of this committee will not be discussed. Please note that the meeting may close early if all business is finished.

All visitors to the Ronald Reagan Building will have to show a picture ID in order to be admitted into the building. Since seating is limited, all persons attending this event must provide notice, preferably by close of business Wednesday, February 27, 2008, to Ms. Lauren I. Pearce, Office of Finance, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW., Suite 4.5A, Washington, DC 20229; *telephone number:* 202–344–3393; *facsimile:* 202–344–1818; *e-mail: CBP.Userfeeadvisorycommittee@dhs.gov.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Lauren I. Pearce as soon as possible.

Tentative Agenda

1. Introduction of Committee members and CBP Personnel.
2. Report of activities since last meeting of June 6, 2007.
3. Discussion of the Electronic Travel Authorization and Model Airports Legislation.
4. Discussion of United States Passenger Accelerated Services System (US PASS).
5. Discussion of the Workload Staffing Model.
6. Overview and discussion of CBP's budget.
7. Discussion of Reimbursable Overtime.
8. Discussion of specific concerns and questions of Committee members.
9. Agree on consensus recommendations on the issues discussed.
10. Discussion of Committee administrative issues and scheduling of next meeting.
11. Adjourn.

Dated: February 11, 2008.

Elaine Killoran,

Acting Assistant Commissioner, Office of Finance, U.S. Customs and Border Protection.

[FR Doc. E8–2769 Filed 2–13–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–EL, WYW154432]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale.

SUMMARY: Notice is hereby given that certain coal resources in the North Maysdorf Coal Tract described below in Campbell County, Wyoming, will be reoffered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 *et seq.*).

DATES: The lease sale reoffer will be held at 10 a.m., on Wednesday, March 19, 2008. Sealed bids must be submitted on or before 4 p.m., on Tuesday, March 18, 2008.

ADDRESSES: The lease sale reoffer will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, WY 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Robert Janssen, Coal Coordinator, at 307–775–6258, and 307–775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by Cordero Mining Company, Gillette, Wyoming. The North Maysdorf Tract was previously offered on October 18, 2007, and the one bid received at that sale was rejected because it did not meet the BLM's estimate of fair market value. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following-described lands located in central Campbell County, approximately 2 miles east of State Highway 59, 4 miles south of Bishop Road, and is adjacent to the southern lease boundary of the Belle Ayr Mine and the northwest lease boundary of the Cordero Rojo Mine:

T. 47 N., R. 71 W., 6th P.M., Wyoming
Section 7: Lots 5, 12, 13, 20;
Section 8: Lots 3 through 6, 11 through 13.
Containing 445.89 acres more or less.

The tract is adjacent to Federal coal leases to the north and east held by the Belle Ayr and Cordero Rojo Mines, respectively. It is adjacent to additional unleased Federal coal to the west and south. It is also adjacent to about 40 acres of private coal controlled by the Cordero Rojo Mine. All of the acreage offered has been determined to be suitable for mining. Features such as pipelines can be moved to permit coal recovery. In addition, oil and/or gas wells have been drilled on the tract. The estimate of the bonus value of the coal lease will include consideration of any future production from these wells. An economic analysis of this future income stream will determine whether a well is bought out and plugged prior to mining or re-established after mining is completed. The surface estate of the tract is owned by Cordero Mining Company, Caballo Rojo, Inc. and Foundation Wyoming Land Company.

The tract contains surface mineable coal reserves in the Wyodak seam currently being recovered in the adjacent, existing mine. On the LBA tract, the Wyodak seam is generally a single seam averaging approximately 70 feet thick. The overburden depths range from 170–360 feet thick on the LBA.

The tract contains an estimated 54,657,000 tons of mineable coal. This estimate of mineable reserves includes the main Wyodak seam but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the adjacent private coal although these reserves are expected to be recovered in conjunction with the LBA. The total mineable stripping ratio (BCY/Ton) of the coal is about 3.7:1. Potential bidders for the LBA should consider the recovery rate expected from thick seam mining.

The North Maysdorf LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8586 BTU/lb with about 0.27% sulfur. These quality averages place the coal reserves near the middle of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m., on Tuesday, March 18, 2008, will not be considered. The minimum bid is not intended to represent fair market value. The fair market value of the tract will be determined by the Authorized Officer after the sale. The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by strip or auger mining methods and 8 percent of the value of the coal produced by underground mining methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the addresses above. Case file documents, WYW154432, are available for inspection at the BLM Wyoming State Office.

Dated: January 29, 2008.

Larry Claypool,

Acting Deputy State Director, Minerals and Lands.

[FR Doc. E8–2043 Filed 2–13–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–110]

Meeting of the Central California Resource Advisory Council

ACTION: Notice of public tour.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will hold a public tour as indicated below.

DATES: The public tour will be held Saturday, March 15, 2008, at the Clear Creek Management Area, which comprises 63,000 acres of BLM public lands in southern San Benito and western Fresno counties, California. Members of the public are welcome to attend the tour, but must provide their own transportation and lunch. Those who wish to attend the tour should meet at the Oak Flat Campground, located on Clear Creek Road off Coalinga-Los Gatos Road, at 10 a.m. The tour should conclude at about 4 p.m. The event may be postponed to a later date if there is inclement weather. To confirm the tour will take place as planned, call the BLM Hollister Field Office at (831) 630–5000.

FOR FURTHER INFORMATION CONTACT: BLM Hollister Field Office Manager

Rick Cooper, (831) 630–5010; or BLM Central California Public Affairs Officer David Christy, (916) 985–4474.

SUPPLEMENTARY INFORMATION: The twelve-member Central California RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in the Central California. This tour will focus on issues for the Clear Creek Management Area. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: February 7, 2008.

David Christy,

Public Affairs Officer.

[FR Doc. E8–2791 Filed 2–13–08; 8:45 am]

BILLING CODE 1820–XX–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–922–08–1310–FI–P; SDM 96171]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; SDM 96171

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Per 30 U.S.C. 188(d), BTA Oil Producers, LLC timely filed a petition for reinstatement of oil and gas lease SDM 96171, Harding County, South Dakota. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $10 per acre and 16⅔ percent or 4 percentages above the existing competitive royalty rate. The lessee paid the $500 administration fee for the reinstatement of the lease and $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to:

- The original terms and conditions of the lease;
- The increased rental of $10 per acre;
- The increased royalty of 16⅔ percent or 4 percentages above the existing competitive royalty rate; and
- The $163 cost of publishing this Notice.

FOR FURTHER INFORMATION CONTACT: Karen L. Johnson, Chief, Fluids Adjudication Section, BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5098.

Dated: February 7, 2008.

Karen L. Johnson,

Chief, Fluids Adjudication Section.

[FR Doc. E8–2802 Filed 2–13–08; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–589]

In the Matter of: Certain Switches and Products Containing Same; Notice of Commission Determination of No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is no violation of 19 U.S.C. 1337 by respondents Belkin International, Inc., Belkin, Inc., and Emine Technology Co., Ltd. in the above-referenced investigation.

FOR FURTHER INFORMATION CONTACT: Michelle Walters, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on December 7, 2006, based on a complaint filed by ATEN International Co., Ltd. of Taipei, Taiwan, and ATEN Technology, Inc. of Irvine, California (collectively, ''ATEN''). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain switches and products containing the same by reason of infringement of various claims of United States Patent No. 7,035,112. The complaint named six respondents: Belkin International, Inc., Belkin, Inc. (collectively, ''Belkin''), Emine Technology Co., Ltd. (''Emine''), RATOC Systems, Inc., RATOC Systems International, Inc. (collectively, ''RATOC''), and JustCom Tech, Inc. (''JustCom''). The Commission has terminated the investigation with respect to RATOC and JustCom based on settlement agreements, including a consent order.

On November 7, 2007, the ALJ issued his final initial determination (''ID''), and on November 21, 2007, he issued his recommended determination on remedy and bonding. In his ID, the ALJ found that Belkin's and Emine's accused products do not infringe asserted claims 1 and 12–21. In addition, the ALJ found that the claims are not invalid for anticipation or obviousness. The ALJ also found that the claims are not invalid for lack of written description support and that the patent is not unenforceable for inequitable conduct. Further, the ALJ found that there was no domestic industry based on the asserted patent. ATEN, Belkin, Emine, and the Commission investigative attorney each filed petitions for review of the ALJ's ID and responses to the petitions. The Commission determined to review a portion of the ALJ's ID and requested briefing from the parties on the issues under review and on remedy, the public interest, and bonding.

Having examined the record of this investigation, including the ALJ's final ID, the written submissions on review, and the responses thereto, the Commission has determined (1) to modify the ALJ's claim construction of the term ''body;'' (2) to adopt the ALJ's claim construction of the terms ''fixedly attached'' and ''integrated into;'' (3) to determine that Belkin's and Emine's products do not infringe the asserted claims under the adopted claim construction; and (4) to determine that, alternatively, if a broad claim construction were adopted for the term ''body,'' the claims would be invalid for anticipation or obviousness in light of the asserted prior art.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.45 of the Commission's

Rules of Practice and Procedure (19 CFR 210.45).

Issued: February 8, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–2716 Filed 2–13–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,553 TA–W–61,553A; TA–W–61,553B; TA–W–61,553C; TA–W–61,553D]

Honeywell Resins & Chemicals, Resins & Chemicals Division, Including On-Site Leased Workers From Defender Services, Inc., and Manpower Anderson, SC; Including Employees of Honeywell Resins & Chemicals, Resins & Chemicals Division, Anderson, SC, Working in the Following Locations: Waxhaw, NC; Cortlandt Manor, NY; Mooresville, NC; Greensboro, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 11, 2007, applicable to workers of Honeywell Resins & Chemicals, Resins & Chemicals Division, including on-site leased workers from Defender Services, Inc., and Manpower, Anderson, South Carolina. The notice was published in the **Federal Register** on July 26, 2007 (72 FR 41088).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produced nylon fibers for textile applications.

New information shows that worker separations have occurred involving employees of the Anderson, South Carolina facility of Honeywell Resins & Chemicals, Resins & Chemicals Division working in the following locations: Waxhaw, North Carolina (Mr. Patrick Williams), Cortlandt Manor, New York (Mr. Walter Pinsdorf), Mooresville, North Carolina (Mr. C. Wright Sizemore), and Greensboro, North Carolina (Mr. Richard Wald).

Based on these findings, the Department is amending this certification to include employees of the Anderson, South Carolina facility of Honeywell Resins & Chemicals, Resins & Chemicals Division, located in the above mentioned locations.

The intent of the Department's certification is to include all workers of Honeywell Resins & Chemicals, Resins & Chemicals Division, Anderson, South Carolina, who are adversely affected secondary workers.

The amended notice applicable to TA–W–61,553 is hereby issued as follows:

All workers of Honeywell Resins & Chemicals, Resin and Chemicals Division, Anderson, South Carolina, including on-site leased workers of Defender Services, Inc., and ManPower (TA–W–61,553), and including employees of Honeywell Resins & Chemicals, Resin and Chemicals Division, Anderson, South Carolina located in Waxhaw, North Carolina (TA–W–61,553A), Cortlandt Manor, New York (TA–W–61,553B), Mooresville, North Carolina (TA–W–61,553C), and Greensboro, North Carolina (TA–W–61,553D), who became totally or partially separated from employment on or after May 21, 2006, through July 11, 2009, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 6th day of February 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–2735 Filed 2–13–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0007]

Subpart R (''Steel Erection''); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in 29 CFR part 1926, subpart R (''Steel Erection'').

DATES: Comments must be submitted (postmarked, sent, or received) by April 14, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2008–0007, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. 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. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0007). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled ''Supplementary Information.''

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Michael Buchet at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Michael Buchet, Directorate of Construction, OSHA, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation

program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The following provisions of 29 CFR part 1926, subpart R (the ''Subpart'') contain paperwork requirements: §§ 1926.752(a)(1) and (a)(2); 1926.753(c)(5) and (e)(2); 1926.757(a)(7), (a)(9), and (e)(4)(i); 1926.758(g); 1926.760(e) and (e)(1); 1926.761; and paragraph (c)(4)(ii) of appendix G. These provisions ensure that:

Designated parties, especially steel erectors, receive notice that building materials, components, steel structures, and fall protection equipment are safe for specific uses; and employees exposed to fall hazards receive the required training in the recognition and control of fall hazards. These paperwork requirements provide a direct and efficient means for controlling contractors and steel erectors to inform others (e.g., employees) of steel erection hazards and their control, thereby preventing death and serious injury by ensuring that structural steel members remain stable and that employees use fall protection correctly.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting that OMB extend its approval of the information collection requirements contained in 29 CFR part 1926, subpart R (''Steel Erection''). The Agency is proposing to retain its existing burden hour estimate of 30,339 hours for the collection of information requirements specified by the subpart.

Type of Review: Extension of a currently approved collection.

Title: 29 CFR part 1926, subpart R (''Steel Erection'').

OMB Number: 1218–0241.

Affected Public: Business or other for-profits.

Number of Respondents: 20,781.

Frequency: On occasion.

Average Time Per Response: Varies from one minute (.02 hour) for a controlling contractor to inform a steel erector to leave fall protection at the jobsite to three hours for controlling contractors to obtain approval from the project structural engineer of record before modifying anchor bolts.

Estimated Total Burden Hours: 30,339.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (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 the ICR (Docket No. OSHA–2008–0007). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. 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).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. 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 this website. 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 website'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.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on February 8, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–2671 Filed 2–13–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0006]

Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') (29 CFR part 1915); Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in its subparts entitled Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') (29 CFR part 1915).

DATES: Comments must be submitted (postmarked, sent, or received) by April 14, 2008.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2008–0006, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. 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. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0006). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled ''Supplementary Information.''

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

One provision in subpart A contains paperwork requirements (§ 1915.7). Section 1915.7(b)(2) specifies that shipyard employers must maintain a roster of designated competent persons (for inspecting and testing spaces covered by subpart B), or a statement that a Marine Chemist will perform these inspections and tests. Section 1915.7(d) requires that employers: ensure that competent persons, Marine Chemists, and certified industrial hygienists (CIHs) make a record of each inspection and test they conduct, post the record near the covered space while work is in progress, and file the record for a specified period. In addition, employers must make the roster or statement and the inspection and test records available to designated parties on request.

Subpart B consists of several standards governing entry into confined and enclosed spaces and other dangerous atmospheres in shipyard employment. These standards require that employers:

- Ensure that competent persons conduct inspections and atmospheric testing prior to employees entering a confined or enclosed space (§§ 1915.12(a)–(c));
- Warn employees not to enter hazardous spaces and other dangerous atmospheres (§ 1915.12(a)–(c), 1915.16);
- Train employees who will be entering confined or enclosed spaces and certify that such training has been provided (§ 1915.12(d));
- Establish and train shipyard rescue teams or arrange for outside rescue teams and provide them with information (§ 1915.12(e));
- Ensure that one person on each rescue team has a valid first-aid training certificate (§ 1915.12(e));
- Exchange information regarding hazards, safety rules, and emergency procedures concerning these spaces and atmospheres with other employers whose employees may enter these spaces and atmospheres (§ 1915.12(f));
- Ensure testing of certain spaces before cleaning and other cold work is started and as necessary thereafter while the operations are ongoing (§ 1915.13(b)(2) and (4));
- Post signs prohibiting ignition sources within or near a space that contains bulk quantities of flammable or combustible liquids or gases (§ 1915.13(b)(10));
- Ensure that confined and enclosed spaces are tested before employees perform hot work in these spaces (§ 1915.14(a));
- Post warnings of testing conducted by competent persons and certificates of testing conducted by a Marine Chemist or Coast Guard authorized person in the immediate vicinity of the hot work operation while the operation is in progress (§ 1915.14(a) and (b)); and
- Retain certificates of testing on file for at least three months after completing the operation (§ 1915.14(a)(2)).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

The Agency is requesting that OMB extend its approval of the information collection requirements contained in Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') (29 CFR part 1915). The Agency is proposing to decrease the existing burden hour estimate for the collection of information requirements specified by subparts A and B. In this regard, the Agency is proposing to decrease the current burden hour estimate from 348,394 hours to 312,774 hours, a total decrease of 35,620 hours. The decrease is the result of updated data indicating a decline in the number of establishments from 717 to 639.

Type of Review: Extension of a currently approved collection.

Title: Subpart A (''General Provisions'') and Subpart B (''Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment'') (29 CFR part 1915).

OMB Number: 1218–0011.

Affected Public: Business or other for-profits.

Number of Respondents: 639.

Frequency: On occasion.

Average Time per Response: Varies from 1 minute (.02 hour) for a secretary to maintain a training certification record to 10 minutes (.17 hour) for a supervisory shipyard production worker to update, maintain and post either the required roster or statement at each shipyard.

Estimated Total Burden Hours: 312,774.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (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 the ICR (Docket No. OSHA–2008–0006). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. 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).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. 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 this Web site. 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.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on February 8, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–2672 Filed 2–13–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health; notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (''MACOSH'' or ''Committee'') was established to advise the Assistant Secretary of Labor for OSHA on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce the MACOSH and workgroup meetings scheduled for March 18 to 20, 2008.

DATES: On Tuesday, March 18, 2008, the Shipyards, Longshoring, and Cranes and Falls workgroups will meet during the times listed below in the **SUPPLEMENTARY INFORMATION** section. On Wednesday, March 19, 2008, the Health, and Outreach and Safety Culture workgroups will meet during the times listed below in the **SUPPLEMENTARY INFORMATION** section. MACOSH will meet on Thursday, March 20, 2008, from 8:30 a.m. until approximately 5 p.m.

ADDRESSES: The Committee and workgroups will meet at the Wyndham Greenspoint Hotel, 12400 Greenspoint Drive, Houston, TX 77060. Mail comments, views, or statements in response to this notice to Vanessa L. Welch, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone (202) 693–2086; FAX: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH and this meeting, contact: Joseph Daddura, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2067. Individuals with disabilities wishing to attend the meeting should contact Vanessa L. Welch at (202) 693–2086 no later than March 3, 2008, to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: All MACOSH meetings and workgroup meetings are open to the public. All interested persons are invited to attend the MACOSH and workgroup meetings at the times and places listed above.

Each workgroup may discuss one or more of the topics listed for that workgroup as time permits. The meeting times for each workgroup are approximate and subject to change without advance notice.

The Shipyards workgroup will meet on Tuesday, March 18, 2008, from 8 a.m. until 10:30 a.m. in Salon 2. Discussions may include spray paint standards and hot work on coatings, the shipbreaking guidance document, and electrical standards.

The Longshoring workgroup will meet on Tuesday, March 18, 2008, from 10:45 a.m. until 1:15 p.m. in Salon 2. Discussions may include the traffic safety in marine terminals guidance document, the roll-on roll-off cargo guidance document, the International Maritime Organization's initiative on cargo-lashing safety, and the flat-rack guidance document.

The Cranes and Falls workgroup will meet on Tuesday, March 18, 2008, from 2:15 p.m. until 3:15 p.m. in Salon 2. Discussions may include working over water from aerial work platforms, working under a suspended load, and the barge safety guidance document.

The Health workgroup will meet on Wednesday, March 19, 2008, from 8 a.m. until 10:30 a.m. in Salon 3. Discussions will include radiation exposure in marine terminals.

The Outreach and Safety Culture workgroup will meet on Wednesday, March 19, 2008, from 10:45 a.m. until 1:15 p.m. in Salon 3. Discussions may include leading indicators, substance abuse, and the longshoring and shipyard pocket guides.

MACOSH agenda: The agenda will include: an OSHA activities update, reports from each workgroup, and a review of the minutes from the previous meeting.

Public Participation: Written data, views, or comments for consideration by MACOSH on the various agenda items listed above should be submitted to Vanessa L. Welch at the address listed above. Submissions received by March 3, 2008, will be provided to Committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items listed above should notify Vanessa L. Welch by March 3, 2008. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: 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(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1912.

Signed at Washington, DC on the 8th of February, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–2673 Filed 2–13–08; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Notice of Enforcement Discretion (NOEDs) For Operating Power Reactors and Gaseous Diffusion Plants (GDP) (NRC Enforcement Policy).

2. *Current OMB approval number:* 3150–0136.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* Nuclear power reactor licensees and gaseous diffusion plant certificate holders.

5. *The number of annual respondents:* Approximately 14.

6. *The number of hours needed annually to complete the requirement or request:* 1,825.

7. *Abstract:* The NRC's Enforcement Policy addresses circumstances in which the NRC may exercise enforcement discretion. A specific type of enforcement discretion is designated as a NOED and relates to circumstances which may arise where a nuclear power plant licensee's compliance with a Technical Specification Limiting Condition for Operation or other license conditions would involve: (1) An unnecessary plant shutdown; (2) performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions; or (3) unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other condition would unnecessarily call for a total plant shutdown, or, compliance would unnecessarily place the plant in a condition where safety, safeguards or security features were degraded or inoperable.

A licensee or certificate holder seeking the issuance of an NOED must provide a written justification, in accordance with guidance provided in NRC Inspection Manual, Part 9900, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

Submit, by April 14, 2008, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Margaret A. Janney (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7245, or by e-mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 7th day of February 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–2763 Filed 2–13–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–247 and 50–286; License Nos. DPR–26 AND DPR–64]

Entergy Nuclear Operations, Inc., Entergy Nuclear Indian Point 2, Llc, Entergy Nuclear Indian Point 3, Llc; Indian Point Nuclear Generating Unit Nos. 2 and 3; Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated June 25, 2007, Friends United for Sustainable Energy (FUSE, the Petitioner) has requested that pursuant to 10 CFR 2.206, the NRC take action with regard to the Indian Point Nuclear Generating Unit Nos. 2 and 3 (Indian Point). The petition requested that the NRC issue orders, effective immediately, to suspend the Indian Point licenses until such time as the issues described in the petition can be remedied to a point of full compliance with all local, State, and Federal laws.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation (NRR). On September 4, 2007, the Petitioner was notified that its request for immediate action is denied. The Petitioner participated in a conference call with the NRR Petition Review Board (PRB) on December 21, 2007, to discuss the petition. The additional information provided by the Petitioner was considered by the PRB before making its final recommendation. By letter dated February 1, 2008, the Director accepted for review pursuant to 10 CFR 2.206 the Petitioner's concerns regarding the licensee's failure to implement the new emergency notification siren system in a timely manner and the underground leakage of contaminated water at the Indian Point facility. As provided by Section 2.206, appropriate action will be taken on this petition within a reasonable time.

A copy of the petition can be located at Agencywide Documents Access and Management Systems, Accession No. ML072140693, and is available for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

Dated at Rockville, Maryland this 1st day of February 2008.

For the Nuclear Regulatory Commission.

J. E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E8–2776 Filed 2–13–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34325]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Amendment of a Materials Permit in Accordance With Byproduct Materials License No. 03–23853–01VA, for Unrestricted Release of a Department of Veterans Affairs' Facility in Seattle, WA

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: William Snell, Senior Health Physicist, Decommissioning Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, 2443 Warrenville Road, Lisle, Illinois 60532; telephone: (630) 829–9871; fax number: (630) 515–1259; or by e-mail at *wgs@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend a materials permit held under Byproduct Materials License No. 03–23853–01VA. The permit is held by the Department of Veterans Affairs (the Licensee), for its Puget Sound VA Health Care System facilities, located at 1660 South Columbian Way, Seattle, Washington (the Facility). Issuance of the amendment would authorize release of Waste Area 3 (described below) for unrestricted use. The Licensee requested this action in a letter dated July 5, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's July 5, 2007, materials permit amendment request, resulting in release of Waste Area 3 for unrestricted use. License No. 03–23853–01VA was issued on March 17, 2003, pursuant to 10 CFR Parts 30 and 35, and has been amended periodically since that time. This license authorizes the Licensee to use byproduct materials at several Licensee facilities around the country, as authorized on a site-specific basis by permits issued by the Licensee's National Radiation Safety Committee. Under the license, the permits authorize the use of by-product materials for various medical and veterinary purposes, and for use in portable gauges.

The Facility is situated on a 44 acre site comprised of 20 buildings and five parking areas, and is located in a metropolitan area of Seattle, Washington which is surrounded by residential neighborhoods and commercial enterprises. Within the Facility, Waste Area 3 was constructed in 1988 as a temporary storage site for decay-in-storage radioactive waste, and was a single floor, sheet-metal enclosed structure bolted onto an $8 \times 14 \times 8$ foot chain-link fence. The floor consisted of ¾ inch thick asphalt. The structure had no electrical, ventilation, heating system, drainage system, water, sewer, or septic. The Licensee ceased using licensed materials in Waste Area 3 on November 15, 2006, and initiated surveys and decontamination of the building. Based on the Licensee's historical knowledge of the site and the conditions within Waste Area 3, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted final status surveys of Waste Area 3 on November 17, 2006. Additional surveys were conducted on April 10, 2007, of the waste barrels that had been removed from Waste Storage Area 3 in November 2006. The results of these surveys along with other supporting information were provided to the NRC to demonstrate that the criteria in Subpart E of 10 CFR Part 20 for unrestricted release have been met.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities in Waste Area 3, and seeks the unrestricted use of Waste Area 3.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted in Waste Area 3 shows that such activities involved use

of the following radionuclides with half-lives greater than 120 days: hydrogen-3 (H–3) and carbon-14 (C–14). Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of Waste Area 3 affected by these radionuclides.

The Licensee completed final status surveys on Waste Area 3 on November 17, 2006. The surveys covered all areas of Waste Area 3. The final status survey report was attached to the Licensee's amendment request dated July 5, 2007. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 using release criteria for building surfaces based on NUREG–1556, Volume 7, ''Program-Specific Guidance about Academic, Research and Development, and Other Licenses of Limited Scope Including Gas Chromatographs and X-Ray Fluorescence Analyzers—Final Report,'' Appendix Q, ''Radiation Safety Survey Topics.'' These release criteria are the same as the radionuclide-specific dose-based release criteria, described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. These values provide acceptable levels of surface contamination to demonstrate compliance with the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these values and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material in Waste Area 3. The NRC staff reviewed available docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding Waste Area 3. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of Waste Area 3 for unrestricted use is in compliance with 10 CFR Part 20. Based on its review, the staff considered the impact of the residual radioactivity from Waste Area 3 and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that Waste Area 3 meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of Washington Department of Health, Office of Radiation Protection, for review on January 2, 2008. On January 8, 2008, the Office of Radiation Protection responded by e-mail. The State agreed with the conclusions of the EA.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. E. Lynn McGuire, Department of Veterans Affairs, letter to Cassandra Frazier, U.S. Nuclear Regulatory Commission, Region III, dated July 5, 2007 (ADAMS Accession No. ML071900464);
2. Thomas Huston, Department of Veterans Affairs, e-mail to William Snell, U.S. Nuclear Regulatory Commission, Region III, dated December 12, 2007 (ADAMS Accession No. ML073610490); Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10 Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;''
5. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,''
6. NUREG–1556, Volume 7, ''Program-Specific Guidance About Academic, Research and Development, and Other Licenses of Limited Scope Including Gas Chromatographs and X-Ray Fluorescence Analyzers—Final Report,'' Appendix Q, ''Radiation Safety Survey Topics.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 4th day of February 2008.

For the Nuclear Regulatory Commission.

Patrick L. Louden,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. E8–2774 Filed 2–13–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–016]

Unistar Nuclear, LLC; Calvert Cliffs Partial Combined License Application; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

UniStar Nuclear, LLC (UniStar), has submitted a partial application for a combined license (COL) for its Calvert Cliffs Nuclear Power Plant (CCNPP) site to build Unit 3, located on approximately 2,057 acres in Calvert County, Maryland, approximately 40 miles southeast of Washington, DC, and 7.5 miles north of Solomons, Maryland, along the western bank of the Chesapeake Bay. Part 1 of the application for the COL was submitted by letter dated July 13, 2007, pursuant to the requirements of Title 10, Part 52, and in accordance with 10 CFR 2.101(a)(5). Subsequent information was submitted on July 16, 2007, August 2, 2007, and October 30, 2007. In addition, the UniStar COL application references dose consequence information in UniStar's December 14, 2007, application for certification of the Evolutionary Power Reactor design. Accordingly, the NRC staff reviewed the design certification application and determined that it contains information sufficient to permit docketing of the environmental report (ER). A notice of receipt and availability of the partial application, which included the ER, was published in the **Federal Register** on August 15, 2007 (72 FR 45832). A notice of acceptance for docketing of the partial application for the COL was published in the **Federal Register** on January 31, 2008 (73 FR 5877). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the COL partial application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

In addition, as outlined in 36 CFR 800.8(c), ''Coordination with the National Environmental Policy Act (NEPA) of 1969, as amended,'' the NRC staff plans to coordinate compliance with Section 106 of the National Historic Preservation Act (NHPA) with steps taken to meet the requirements of NEPA. Pursuant to 36 CFR 800.8(c), the NRC staff intends to use the process and documentation for the preparation of the EIS on the proposed action to comply with section 106 of the NHPA in lieu of the procedures set forth in 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.45, 10 CFR 51.50, and 10 CFR 2.101(a)(5), UniStar submitted the ER along with portions of the Final Safety Analysis Report (FSAR) as part 1 of the partial application. The ER was prepared pursuant to 10 CFR Parts 51 and 52 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of the NRC's Agency-wide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Electronic Reading Room (ERR) link. The accession number in ADAMS for part 1 of the partial application received on July 13, 2007, is ML071980294. The accession numbers in ADAMS for the supplemental information submitted by letters dated July 16, 2007, August 2, 2007, October 30, 2007, and December 14, 2007, are ML072000363, ML072200533, ML072220589, ML073060128, ML073520192, ML073520211, and ML073520221. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209 or 301–415–4737, or by sending an e-mail to *pdr@nrc.gov*. The partial application may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-licensing/col/calvert-cliffs.html*. In addition, the Calvert Library, Southern Branch located at 20 Appeal Lane, Lusby, Maryland, and Calvert Library, Prince Frederick located at 850 Costley Way, Prince Frederick, Maryland, have agreed to make the ER available for public inspection.

The following key reference documents related to the COL partial application and the NRC staff's review process are available through the NRC's Web site at *http://www.nrc.gov*:

a. 10 CFR Part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,

b. 10 CFR Part 52, Licenses, Certifications, and Approvals for Nuclear Power Plants,

c. 10 CFR Part 100, Reactor Site Criteria,

d. NUREG–1555, Standard Review Plans for Environmental Reviews for Nuclear Power Plants,

e. NUREG/BR–0298, Brochure on Nuclear Power Plant Licensing Process,

f. Fact Sheet on Nuclear Power Plant Licensing Process,

g. Regulatory Guide 4.2, Preparation of Environmental Reports for Nuclear Power Stations,

h. Regulatory Guide 1.206, Combined License Applications for Nuclear Power Plants, and

i. NRR Office Instruction LIC–203, Procedural Guidance for Preparing Environmental Assessments and Considering Environmental Issues.

The regulations, NUREG-series documents, regulatory guides, and fact sheet can be found under Document Collections in the Electronic Reading Room on the NRC Web page. Finally, Office Instruction LIC–203 can be found in ADAMS in two parts under accession numbers ML011710073 (main text) and ML011780314 (charts and figures).

This notice advises the public that the NRC intends to gather the information necessary to prepare an EIS in support of the review of the partial application for the COL at the CCNPP COL site. Possible alternatives to the proposed action (issuance of the COL at the CCNPP COL site) include no action and consideration of alternative sites. The NRC is required by 10 CFR 51.20(b)(2) to prepare an EIS in connection with the issuance of a COL. This notice is being published in accordance with NEPA and NRC regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the EIS and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the EIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of the scope of the EIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Identify parties consulting with the NRC under the NHPA, as set forth in 36 CFR 800.8(c)(1)(i);

g. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule;

h. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

i. Describe how the EIS will be prepared and include any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, UniStar Nuclear;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold two identical public scoping meetings for the EIS regarding the CCNPP COL partial application. The scoping meetings are scheduled for Wednesday, March 19, 2008 at the Holiday Inn Select, 155 Holiday Drive, Solomons, Maryland. The first meeting will convene at 1 p.m. and will continue until approximately 4 p.m. The second meeting will convene at 7 p.m. and will continue until approximately 10 p.m. The meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the EIS, the proposed review schedule, and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the EIS. Additionally, the NRC staff will host informal discussions one hour before the start of the two meetings at the Holiday Inn Select. No formal comments on the proposed scope of the EIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed below. Persons may register to attend or present oral comments at the meeting on the scope of the NEPA review by contacting Mr. Thomas L. Fredrichs at 1–800–368–5642, extension 5971, or by e-mail to the NRC at *CalvertCliffs.COLAEIS@nrc.gov*, no later than March 11, 2008.

Members of the public may also register to speak at the meeting within 15 minutes of the start of the meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the EIS. Mr. Fredrichs will need to be contacted no later than March 11, 2008, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the CCNPP COL review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m., during Federal workdays. To be considered in the scoping process, comments should be received by the end of the scoping comment period, which is April 14, 2008. Written comments should be postmarked by April 14, 2008. Electronic comments may be sent via the Internet to the NRC at *CalvertCliffsCOLAEIS@nrc.gov*. Submissions should be sent no later than April 14, 2008, to be considered in the scoping process. Comments will be available in the meeting summary report electronically and accessible through the NRC's ERR link at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the EIS does not entitle participants to become parties to the proceeding to which the EIS relates. Notice of a hearing regarding the complete application for a COL will be the subject of a future **Federal Register** notice if UniStar submits the remaining portion of the Calvert Cliffs COL application and the NRC staff finds it acceptable for docketing.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the NRC's ERR link. The staff will then prepare and issue for comment the draft EIS, which will be the subject of separate notices and a separate public meeting. A copy of the draft EIS will be available for public inspection at the above-mentioned address, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC staff will prepare a final EIS, (which will also be available for public inspection).

Information about the proposed EIS and the scoping process may be obtained from Mr. Thomas L. Fredrichs, Senior Environmental Project Manager at (301) 415–5971.

Dated at Rockville, Maryland, this 8th day of February 2008.

For the Nuclear Regulatory Commission.

R. W. Borchardt,

Director, Office of New Reactors.

[FR Doc. E8–2775 Filed 2–13–08; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 57300]

Order Granting Registration of Lace Financial Corp. as a Nationally Recognized Statistical Rating Organization

February 11, 2008.

LACE Financial Corp. (''LACE''), a credit rating agency, furnished to the Securities and Exchange Commission (''Commission'') an application for registration as a nationally recognized

statistical rating organization (''NRSRO'') under section 15E of the Securities Exchange Act of 1934 (''Exchange Act'') for the classes of credit ratings described in clauses (i) through (v) of section 3(a)(62)(B) of the Exchange Act.

Based on the information provided in the application, LACE has a conflict of interest relating to the fourth class that would cause the firm to be in violation of Exchange Act Rule 17g–5(c)(1) (17 CFR 240.17g–5(c)(1)) if it became registered. LACE requested that the Commission grant LACE an exemption from the conflict of interest prohibition in Exchange Act Rule 17g–5(c)(1). Simultaneously with this Order, the Commission is issuing an Order (''Exemptive Order'') granting LACE an exemption from Exchange Act Rule 17g–5(c)(1) until January 1, 2009.[1]

The Commission finds that the application furnished by LACE is in the form required by Exchange Act section 15E, Exchange Act Rule 17g–1 (17 CFR 240.17g–1), and Form NRSRO (17 CFR 249b.300) and contains the information described in subparagraph (B) of section 15E(a)(1) of the Exchange Act.

Based on the application and Exemptive Order, the Commission finds that the requirements of section 15E of the Exchange Act are satisfied.

Accordingly,

It is ordered, under paragraph (a)(2)(A) of section 15E of the Exchange Act, that the registration of LACE Financial Corp. with the Commission as an NRSRO under section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of section 3(a)(62)(B) of the Exchange Act is granted.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E8–2772 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[1] Release No. 34–57301 (February 11, 2008).

[1] Public Law 109–291 (2006).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57301]

Order Granting Temporary Exemption of LACE Financial Corp. From the Conflict of Interest Prohibition in Rule 17a–5(c)(1) of the Securities Exchange Act of 1934

February 11, 2008.

I. Introduction

The Credit Rating Agency Reform Act of 2006 (''Rating Agency Act''),[1] enacted on September 29, 2006, defined the term ''nationally recognized statistical rating organization'' (''NRSRO''), added Section 15E to the Securities Exchange Act of 1934 (''Exchange Act''), and provided authority for the Securities and Exchange Commission (''Commission'') to implement registration, recordkeeping, financial reporting, and oversight rules with respect to registered credit rating agencies. Exchange Act Rule 17g–1 (17 CFR 240.17g–1), and Form NRSRO (17 CFR 249b.300), prescribe the process for a credit rating agency to apply for registration. Rule 17g–1 and Form NRSRO were effective on June 18, 2007, and the other rules, Rules 17g–2 through 17g–6 (17 CFR 240.17g–2 through 17g–6), became effective on June 26, 2007.[2]

In particular, Rule 17g–5(c)(1) prohibits an NRSRO from issuing or maintaining a credit rating solicited by a person that, in the most recently ended fiscal year, provided the NRSRO with net revenue equaling or exceeding 10% of the total net revenue of the NRSRO for the fiscal year. In adopting this rule, the Commission stated that such a person would be in a position to exercise substantial influence on the NRSRO, which in turn would make it difficult for the NRSRO to remain impartial.[3]

II. Application and Exemption Request of LACE Financial Corporation

LACE Financial Corp. (''LACE''), a credit rating agency, furnished to the Commission an application for registration as an NRSRO under Section 15E of the Exchange Act for the classes of credit ratings described in clauses (i) through (v) of Section 3(a)(62)(B) of the Exchange Act. Based on the information provided in the application, LACE has a conflict of interest relating to the fourth class[4] that would cause the firm to be in violation of Rule 17g–5(c)(1) if LACE became registered. Specifically, for the fiscal year ending December 31, 2007, LACE maintained credit ratings on asset-backed securities solicited by a person that provided LACE with 10% or more of its total revenues for that year.

LACE has requested that the Commission exempt it from Rule 17g–5(c)(1) on the grounds that the prohibition hinders its ability as a small entity to grow its business issuing credit ratings on asset-backed securities. LACE indicated in its application that it expects the percentage of revenue attributable to the relevant client to decrease based on LACE's revenue trend, continued growth, and the problems in the asset-backed securities market.

III. Discussion

The Commission, when adopting Rule 17g–5(c)(1), noted that it intended to monitor how the prohibition operates in practice, particularly with respect to asset-backed securities, and whether exemptions may be appropriate.[5] The Commission notes that the revenue in question was earned by LACE before it submitted its application for registration and in the year before Rule 17g–5 was adopted, which limited the time for LACE to adjust its activities to conform to the requirements of the Rule. In addition, the Commission recognizes that, given LACE's size, it is more likely that the firm would be affected by Rule 17g–5(c)(1) than a larger credit rating agency with a more diversified client base. Further, the Commission notes that LACE has stated that it expects that the percentage of total revenue provided by the client will decrease. Finally, the Commission notes that the threshold in Rule 17g–5(c)(1) is, of necessity, a bright line, but activities that exceed that threshold may or may not necessarily raise the concerns that are the basis for the rule. Hence, the Commission believes that it is important for the Commission to consider for each application the specific facts and circumstances of the applicant and whether to grant an exemption from Rule 17g–5(c)(1). Moreover, in this instance, the Commission recognizes that granting this exemption furthers the primary purpose of the Rating Agency Act, which is to enhance competition in the highly concentrated ratings industry. Granting LACE registration in the asset-backed security class will increase the number of NRSROs registered in this class, which could increase competition.

For these reasons, the Commission finds that granting LACE an exemption from Rule 17g–5(c)(1) for calendar year 2008 is necessary and appropriate in the public interest and is consistent with the protection of investors.[6] The

[2] Release No. 34–55857 (June 5, 2007), 72 FR 33564, 33564–65 (June 18, 2007).

[3] *Id.* at 33598.

[4] The fourth class of credit ratings is for ''issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations* * *) (''asset-backed securities''). Section 3(a)(62)(B)(iv) of the Exchange Act.

[5] Release No. 34–55857 (June 5, 2007), 72 FR 33564, 33598 (June 18, 2007).

[6] Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person from any rule under the Exchange Act, to the extent that the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. 15 U.S.C. 78mm.

exemption will expire on January 1, 2009 (LACE's fiscal year ends on December 31, 2008). The Commission believes that providing LACE with the opportunity to be registered in the asset-backed security class during this time frame is an appropriate approach to addressing the unique circumstances of a small credit rating agency, while balancing this against the goal of Rule 17g–5(c)(1)—to prohibit a conflict that has the potential to influence a credit rating agency's impartiality. Consequently, this exemption is conditioned on LACE disclosing in Exhibit 6 to Form NRSRO that the firm received more than 10% of its net revenue in fiscal year 2007 from a client that paid it to rate asset-backed securities. This disclosure is designed to alert users of credit ratings to the existence of this specific conflict.

Simultaneously with this Order, the Commission is issuing an Order granting the registration of LACE with the Commission as an NRSRO under Section 15E of the Exchange Act.[7]

IV. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,

It is hereby ordered that LACE Financial Corp. is exempt from the conflict of interest prohibition in Exchange Act Rule 17g–5(c)(1) until January 1, 2009, provided that LACE Financial Corp. discloses in Exhibit 6 to Form NRSRO that the firm received more than 10% of its net revenue in fiscal year 2007 from a client that paid it to rate asset-backed securities.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E8–2771 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[7] Release No. 34–57300 (February 11, 2008).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57296; File No. SR–Amex–2008–08]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate Percentage Orders and Passive Price Improving Orders on the AEMI Platform

February 8, 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 February 6, 2008, 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 and II below, which Items have been prepared substantially by the Amex. The Amex has submitted the proposed rule change under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise its rules to eliminate percentage orders and passive price improvement (''PPI'') orders as valid order types for securities traded on the Amex's AEMI platform. According to the Amex, neither order type is currently being used.

The text of the proposed rule change is available at *http://www.amex.com,* the principal office of the Amex, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex 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

In March 2007, the Commission approved PPI orders as a valid order type on AEMI.[5] According to the Amex, PPI orders were designed to encourage specialists and Registered Traders to provide inbound aggressing orders with increased opportunities for price improvement. PPI orders would provide undisplayed liquidity on the AEMI Book and would react to aggressing orders according to criteria met at the time of order entry. The Amex states that it never implemented PPI orders and, therefore, that PPI orders are not being used currently by Amex market participants. The Amex now proposes to eliminate PPI orders from the AEMI rules.

The percentage order is another valid order type under the Amex's AEMI rules that, according to the Amex, is not in use currently. The Amex states that on November 30, 2006, it issued Amex Notice 2006–60, ''Disablement of Percentage Orders in AEMI,'' which prohibited the entry of percentage orders for securities that had migrated from the Amex's legacy systems onto the AEMI platform. That prohibition, which the Amex originally expected to be temporary, has remained in effect. The Amex notes, further, that percentage orders, which involve discretionary action by the specialist, inherently require the specialist to act in an agency capacity for the order. Because the Amex intends to move toward a specialist model that deemphasizes the broker role, the Amex proposes to eliminate percentage orders from the AEMI rules.

The Amex therefore proposes to delete the definitions of percentage order and PPI order from Rule 131–AEMI, ''Types of Orders,'' and all cross-references to such orders in other AEMI rules. In addition, the Amex proposes to delete from Rule 1A–AEMI, ''Applicability, Definitions, References, and Phase-In,'' the definitions of Automatic Conversion, Manual Conversion, Active Manual Conversion, and Passive Manual Conversion, all of which relate only to percentage orders. The Amex also proposes to delete the detailed requirements for percentage order conversions in paragraph (j) of Rule 154–AEMI, ''Orders in AEMI.''

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Regulation NMS,[6] as well as Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[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] *See* Securities Exchange Act Release No. 55464 (March 13, 2007), 72 FR 13146 (March 20, 2007) (order approving File No. SR–Amex–2007–08).

[6] 17 CFR 242.600 *et seq.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex 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

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

The Amex has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Amex has requested that the Commission waive the 30-day operative delay. The Commission hereby grants the Amex's request.[11] As discussed above, neither percentage orders nor PPI orders are currently in use on AEMI. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because doing so will enable the Amex's rules to immediately reflect the actual operation of AEMI and the order types available on AEMI.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2008–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2008–08 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2733 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Amex to provide the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day period in this case.

[11] For purposes of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57297; File No. SR–Amex–2008–02]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of Managed Fund Shares, Fees Applicable to Managed Fund Shares, and the Listing and Trading of Shares of the Bear Stearns Current Yield Fund

February 8, 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 February 7, 2008, 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. 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: (1) Adopt new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of securities (''Managed Fund Shares'') issued by an actively managed, open-end investment management company; (2) list and trade the shares (''Shares'') of the Bear Stearns Current Yield Fund (''Fund''), an investment portfolio of the Bear Stearns Active ETF Trust (''Trust''), pursuant to those rules; and (3) amend its original listing and annual listing fees to include Managed Fund Shares and make certain other changes. The text of the proposed rule change is available at Amex, the Commission's Public Reference Room, and *http://www.amex.com*.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Amex Rules 1000B, 1001B, 1002B, and 1003B to permit the listing and trading of Managed Fund Shares. Pursuant to these new rules, the Exchange proposes to list and trade the Shares. Amex states that the Shares will conform to the initial and continued listing criteria under proposed Amex Rules 1000B, 1001B, and 1002B. The Exchange also proposes to amend its original listing and annual listing fees in Sections 140 and 141 of the Amex *Company Guide* to include Managed Fund Shares and make certain other conforming changes in the Amex rules to incorporate references to the new Amex rules proposed herein.

Background—Exchange-Traded Funds

In 1993, the Exchange listed the first exchange-traded fund (''ETF''), the SPDR Trust, Series 1 (''SPDRs''). Amex's rules currently permit the listing of ETFs pursuant to Amex Rule 1000–AEMI, Rules 1001 to 1006, Rule 1000A–AEMI, and Rules 1001A to 1005A. Amex Rule 1000–AEMI and Rules 1001 to 1006 allow for the listing and trading on the Exchange of portfolio depositary receipts (''PDRs''), which represent interests in a unit investment trust (''UIT'') registered under the Investment Company Act of 1940 (''1940 Act'') that operates on an open-end basis and holds securities that comprise an underlying index or portfolio. Amex Rule 1000A–AEMI and Rules 1001A to 1005A provide standards for the listing and trading of Index Fund Shares (''IFSs,'' and together with PDRs, collectively, ''Index ETFs''), which are securities issued by an open-end management investment company (''open-end fund'') based on a portfolio of stocks or fixed income securities or a combination thereof, that seeks to provide investment results that correspond generally to the price and yield or total return performance of a specified foreign or domestic stock index, fixed income securities index, or combination thereof.

To qualify for listing, shares of Index ETFs must be issued in a specified aggregate minimum number in return for a deposit of specified securities and/or a cash amount, with a value equal to the next determined net asset value (''NAV''). When aggregated in the same specified minimum number, Index ETF shares must be redeemed by the issuer for the specified securities and/or cash, with a value equal to the next determined NAV. The NAV is calculated once a day after the close of the regular trading day based on the assests held in the Index ETF fund at the close of the previous trading day and the value of those assets at the close of the current trading day.

The Exchange notes that Index ETFs are no longer novel products. More than 500 of these products are actively traded on Amex and other national securities exchanges.[3] In 2006, the average daily trading volume for ETFs in the U.S. was in excess of 508 million shares, and as of December 31, 2006, the 376 ETFs then listed on U.S. markets had total assets of $431 billion.

The Exchange also notes that, during the past decade, the degree of portfolio management used by Index ETFs has progressed from the strict replication methods followed by the early UIT products, such as SPDRs and DIAMONDS, to the portfolio sampling and optimization methods used by investment company products such as certain iShares and Vanguard ETFs. The portfolio of an Index ETF that uses a sampling strategy may consist of a subset of the component securities in the index rather than replicating the index, with a view to tracking the benchmark index as effectively as possible.[4] Further, Amex states that the underlying indices have evolved over time, with many of the more recently-listed products being based on indices such as the Intellidex indices that are designed to incorporate quantitative strategies, and alternatively-weighted indices, such as the fundamentally-weighted indices of Wisdom Tree.

While Managed Fund Shares will be structured very similarly to Index ETFs, Managed Fund Shares will be managed like traditional actively managed, open-end investment companies (''Managed Mutual Funds'') and will have specified investment goals and objectives. Unlike Index ETFs, those goals and objectives will not involve seeking to replicate, or provide investment results that correspond generally to, the price and yield or total return performance of a specified index.

Proposed Listing Rules

Proposed new Amex Rules 1000B, 1001B (for initial listing), and 1002B (for continued listing) define and establish listing standards for Managed Fund Shares. Proposed Amex Rule 1000B(b) sets forth the relevant definitions. In particular, proposed Amex Rule 1000B(b)(1) defines ''Managed Fund Share'' as a security that: (a) Represents an interest in a registered open-end fund that invests in a portfolio of securities selected by the open-end fund's investment adviser consistent with the open-end fund's investment objectives and policies; (b) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined NAV; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request for a specified portfolio of securities and/or cash with a value equal to the next determined NAV.

Proposed Amex Rule 1000B(b)(2) defines Disclosed Portfolio as the securities in the open-end fund's portfolio. The term ''Portfolio Indicative Value,'' set forth in proposed Amex Rule 1000B(b)(3), is defined as the estimated indicative value of a Managed Fund Share based on updated information regarding the value of the securities in the Disclosed Portfolio. Lastly, proposed Amex Rule 1000B(b)(4) defines ''Reporting Authority'' to mean the Exchange, a subsidiary of the Exchange, or an institution or service designated by the Exchange or its subsidiary as the official source for determining and reporting the information relating to a series of Managed Fund Shares, including, but not limited to, the Portfolio Indicative Value, the Disclosed Portfolio, the amount of any cash distribution to holders of Managed Fund Shares, NAV, or other information relating to the issuance, redemption, or trading of Managed Fund Shares.

Proposed Commentaries .01 through .05 to proposed Amex Rule 1000B substantially mirror Commentaries .05,

[3] The Exchange states that, as of November 30, 2007, there were 629 ETFs listed on U.S. exchanges.

[4] The Exchange states that an Index ETF may also use sampling techniques. For example, if one of the securities in the benchmark index comprises more than 25% of the index, the Index ETF would be restricted from holding the securities in proportion to its representation in the index without running afoul of Subchapter M of the Internal Revenue Code.

.02(j), .06, .08, and .09 to current Amex Rule 1000A-AEMI, respectively. Specifically, proposed Commentaries .01(a), (b), (c), and (d) are substantively identical to Commentaries .05(d), (f), (e), and (c), respectively, to Amex Rule 1000A-AEMI. The proposed Commentary provisions relate to minimum price variation, hours of trading, listing fees, and surveillance procedures. In addition, the substance of Commentary .05(a) to Amex Rule 1000A-AEMI is set forth in proposed Amex Rule 1000B(b)(3) in connection with the dissemination of information.

Proposed Commentary .02 to Amex Rule 1000B is substantively identical to existing Commentary .02(j) to Amex Rule 1000A-AEMI, which relates to international or global portfolio creations/redemptions. With respect to a Managed Fund Share based on an international or global portfolio, this provision requires that the statutory prospectus or the application for exemption from provisions of the 1940 Act for the series of Managed Fund Shares state that such series will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

Proposed Commentary .03 to Amex Rule 1000B is substantively identical to Commentary .06 to Amex Rule 1000A–AEMI in connection with Exchange obligations for those Managed Fund Shares that receive an exemption from certain prospectus delivery requirements under Section 24(d) of the 1940 Act. Proposed Commentary .04 to Amex Rule 1000B, relating to the limitation of entering multiple limit orders by members and member organizations, is also substantively identical to Commentary .09 to Amex Rule 1000A–AEMI. Lastly, proposed Commentary .05 to Amex Rule 1000B relating to ''trading ahead'' is substantively identical to Commentary .09 to Amex Rule 1000A-AEMI.

With respect to the initial listing standards for Managed Fund Shares, proposed Amex Rule 1001B(i) provides that the Exchange will establish a minimum number of shares outstanding at the time of commencement of trading. In addition, proposed Amex Rule 1001B(ii) requires that the Exchange obtain a representation from the issuer of each series of Managed Fund Shares that the NAV per share for the series will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Proposed Commentary .01 to Amex Rule 1001B specifically provides that each series of Managed Fund Shares, prior to listing and/or trading, is required to submit for Commission review and approval, a proposed rule change pursuant to Section 19(b) of the Act. Accordingly, each series of Managed Fund Shares will require Commission review and approval prior to listing and trading.

The proposed continued listing criteria set forth in proposed Amex Rule 1002B(iii) provides for the delisting of the Shares under any of the following circumstances:

- If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Fund Shares, there are fewer than 50 beneficial holders of the series of the Managed Fund Shares for 30 or more consecutive trading days;
- If the value of the Portfolio Indicative Value is no longer calculated or available, or the Disclosed Portfolio is not made available to all market participants at the same time;
- If the Trust has not filed, on a timely basis, any required filings with the Commission, or if the Exchange becomes aware that the Trust is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to or otherwise applicable to the Trust; or
- If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Fund Shares on the Exchange inadvisable.

Proposed Amex Rule 1002B also sets forth the continued listing criteria relating to the Portfolio Indicative Value and the Disclosed Portfolio. Specifically, proposed Amex Rule 1002B(i) requires that the Portfolio Indicative Value for a Managed Fund Share be widely disseminated by one or more major market data vendors at least every 15 seconds during the time the Managed Fund Shares are traded on the Exchange. Proposed Amex Rule 1002B(ii)(a) provides that the Disclosed Portfolio be disseminated at least once daily to all market participants at the same time. Further, proposed Amex Rule 1002B(ii)(b) requires that the Reporting Authority for the Disclosed Portfolio implement and maintain, or be subject to, ''firewall'' procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Disclosed Portfolio.

Pursuant to proposed Amex Rule 1002B(iv), the Exchange will halt trading under the following circumstances:

- If the circuit breaker parameters of Amex Rule 117 have been reached, the Exchange will halt trading in a series of Managed Fund Shares.
- If the Portfolio Indicative Value of the Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value 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.
- If a series of Managed Fund Shares is trading on the Exchange pursuant to unlisted trading privileges, the Exchange will halt trading in that series if the primary listing market halts trading in that series of Managed Fund Shares because the Portfolio Indicative Value applicable to that series of Managed Fund Shares is not being disseminated as required.
- If the Exchange becomes aware that the NAV or Disclosed Portfolio related to a series of Managed Fund Shares is not being disseminated to all market participants at the same time, the Exchange will halt trading in such Managed Fund Shares. The Exchange may resume trading in the Managed Fund Shares only when the NAV or Disclosed Portfolio is disseminated to all market participants at the same time.
- Finally, in exercising its discretion to halt or suspend trading in Managed Fund Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b), in addition to other factors that may be relevant.

Proposed Amex Rule 1003B would limit Exchange liability in connection with potential claims, damages, losses, or expenses regarding a Managed Fund Share. The Exchange states that proposed Amex Rule 1003B is substantially similar to current Amex Rule 1003A.

Original and Annual Listing Fees

The Exchange seeks to amend its rules relating to listing fees to include Managed Fund Shares. As proposed, Amex's original listing fee applicable to the listing of series of Managed Fund Shares will be $5,000, but may be deferred, waived, or rebated upon transfer to Amex from another marketplace. In addition, the annual listing fee applicable under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of Shares outstanding at the end

of each calendar year. In connection with Section 140 of the *Company Guide*, the Exchange proposes to make a technical revision so that ''Trust Units'' are also included among the types of securities whose initial listing fees may be deferred, waived, or rebated upon transfer to Amex from another marketplace.

Key Features of Managed Fund Shares

Registered Investment Company. A Managed Fund Share means a security that represents an interest in an investment company registered under the 1940 Act organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, the open-end investment company that issues IFSs seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

1940 Act Exemptive Relief. The 1940 Act contemplates two categories of investment companies: those which issue redeemable securities, *i.e.*, open-end investment companies; and those which do not, *i.e.*, closed-end investment companies. Index ETF shares are redeemable, but only in large blocks of shares (not individually), so it is not certain whether they are considered redeemable under the 1940 Act. Because Index ETFs do not fit neatly into either the open-end category or the closed-end category, Index ETFs have had to seek exemptive relief from the Commission to be registered as an open-end investment company. Managed Fund Shares share key structural features with Index ETFs, such as creation and redemption in large blocks of shares being the most important one, that result in the need for exemptive relief, and therefore, Managed Fund Shares will require relief from the same provisions of the 1940 Act.[5]

Intraday Trading. Like Index ETFs, Managed Fund Shares will be listed and traded on a national securities exchange and, therefore, will be available for sale and purchase on an intraday basis, like other listed securities. In contrast, shares of Managed Mutual Funds may only be purchased and sold (issued and redeemed) in direct transactions with the fund, once each day.

Creations and Redemptions of Shares. Managed Fund Shares will be issued and redeemed on a daily basis at NAV, as with Index ETFs. And like Index ETFs, creations and redemptions for Managed Fund Shares must be in large specified blocks of shares called ''Creation Units.'' Purchases and sales of shares in amounts smaller than the number of shares required for a Creation Unit may be effected only in the secondary market and not directly with the fund.

Managed Fund Shares are only redeemable in Creation Units, and only ''Authorized Participants'' may purchase or redeem Managed Fund Shares directly from the fund.[6] Retail investors will not qualify to be Authorized Participants and typically would not have the resources to buy and sell Creation Units. Therefore, they will be unable to purchase or redeem Managed Fund Shares directly from the fund. Rather, retail investors will purchase Managed Fund Shares in the secondary market with the assistance of a broker and will be subject to customary brokerage commissions or fees.

Managed Fund Shares may use one or more of the following three approaches to creations and redemptions: (1) ''In kind'' creation and redemption using a Portfolio Deposit that reflects the composition of the fund; (2) cash creation and redemption; or (3) ''in kind'' creation and redemption using a Portfolio Deposit consisting of securities that do not reflect the composition of the fund, but instead investments in other securities including, for example, specified Index ETFs.[7]

Portfolio Disclosure. One common feature of Index ETFs is disclosure of the contents of the Portfolio Deposit on a daily basis. The components of the Portfolio Deposit reflect, but are not necessarily identical to, the components of the underlying benchmark index on which the Index ETF is based. Aside from providing the information required for daily creations and redemptions, the Portfolio Deposit gives market participants a basis for estimating the intraday value of the fund, and thus, providing a basis for the arbitrage that keeps the market price of Index ETFs generally in line with the NAV of the Index ETF. While Managed Fund Shares may use an in-kind or cash creation and redemption mechanism, as noted above, each series of Managed Fund Shares will disclose daily all of the portfolio securities (*i.e.*, Disclosed Portfolio) of the fund.

Indicative Value Disclosure. In order to provide updated information relating to each Index ETF listed on the Exchange for use by investors, professionals and persons wishing to create or redeem shares in Index ETFs, the Exchange disseminates at least every 15 seconds throughout the trading day a calculation of the estimated NAV of a share of an Index ETF, commonly known as the Intraday Indicative Value or ''IIV,'' as calculated by a third party calculator. Similarly, for each series of Managed Fund Shares, an estimated value, defined in the proposed rules as the ''Portfolio Indicative Value,'' that reflects an estimated intraday value of the fund portfolio will be disseminated at least every 15 seconds. This Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of a series of Managed Fund Shares on a daily basis and provide a close estimate of that value throughout the trading day.

Description of the Fund

The Fund, an exchange-traded fund, is the sole investment portfolio of the Trust. The Trust is organized as a Delaware statutory trust and is an open-end fund registered under the 1940 Act.[8] The investment objective of the Fund is to seek as high a level of current income as is consistent with the preservation of capital and liquidity. The Fund will be actively managed by its portfolio manager, who will have discretion to choose securities for the Fund's portfolio consistent with the Fund's investment objective.[9] The

[5] Bear Stearns Asset Management, Inc. and the Trust have requested exemptions from various provisions of the 1940 Act.

[6] ''Authorized Participant'' is a participant in the Depository Trust Company, which has signed a ''Participant Agreement'' with the distributor for the Fund, ALPS Distributors, Inc.

[7] For most Index ETFs, the creation and redemption process is effected ''in kind.'' Creation ''in kind'' typically means that the investor—usually a brokerage house or large institutional investor—purchases the Creation Unit with a ''Portfolio Deposit'' equal in value to the aggregate NAV of the shares in the Creation Unit. The Portfolio Deposit generally consists of a basket of securities that reflects the composition of the Index ETF's portfolio. Similarly, an investor redeeming shares in the Index ETF receives in exchange for shares in the Index ETF the securities in the ''Redemption Basket,'' which is usually the same as the Portfolio Deposit and consists of securities that reflect the composition of the Index ETF's portfolio. The Portfolio Deposit often includes a small cash component to make the value of the deposit or basket exactly equal to the aggregate NAV. Most Index ETFs also permit cash creations and redemptions under specified and limited circumstances.

[8] The Exchange states that the Fund is not a ''money market fund'' and is not subject to certain rules and regulations under the 1940 Act governing money market funds.

[9] The Exchange states that the Fund's investment objective may be changed without shareholder

Fund's portfolio manager seeks to attain the Fund's objective by investing primarily in short-term debt obligations, including U.S. government securities, bank obligations, corporate debt obligations, mortgage-backed and asset-backed securities, municipal obligations, foreign bank obligations (U.S. dollar denominated), foreign corporate debt obligations (U.S. dollar denominated), repurchase agreements, and reverse repurchase agreements.

The Exchange proposes to list and trade the Fund Shares pursuant to proposed Amex Rules 1000B, 1001B, and 1002B. Amex represents that the Shares will conform to the initial and continued listing criteria under such proposed rules.[10]

The Registration Statement, including the Prospectus and Statement of Additional Information (''SAI''), provides a detailed description of the Fund including, but not limited to, the structure of the Fund, cash-only creation and redemption processes, investment objective and policies, characteristics, tax status, and distributions.[11]

Availability of Information Regarding the Fund and the Shares

The daily NAV for the Fund will be calculated and disseminated publicly each Business Day [12] to all market participants at the same time. In addition, prior to the opening each Business Day, the Fund will make publicly available on its Web site the Disclosed Portfolio, which is the file of all the portfolio securities held by the Fund and the quantities thereof, including, as applicable, the specific types and amounts of short-term debt securities and the amount of cash held in the portfolio of the Fund, as of the close of business on the prior Business Day, reflecting all securities bought and sold on such prior Business Day.[13] This information will be available to all investors and market participants at the same time and will form the basis for the Fund's calculation of NAV as of the close of regular trading on the Exchange (ordinarily 4 p.m. Eastern Time).

Amex will disseminate at least every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association (''CTA''), the Portfolio Indicative Value. An independent pricing service will calculate the Portfolio Indicative Value during the hours of trading on the Exchange by dividing the ''Estimated Fund Value'' as of the time of the calculation by the total Shares outstanding. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated value of the securities held in the Fund's portfolio, and the estimated amount of accrued interest, minus the estimated amount of liabilities.[14]

The Web site for the Fund will display the Prospectus, the SAI, and additional quantitative information that is updated on a daily basis, including, among other things, the following information, on a per-Share basis: (a) The prior Business Day's NAV, the reported mid-point of the bid-ask spread at the time of NAV calculation (''Bid-Ask Price''), and a calculation of the premium or discount of the Bid-Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Amex also intends to disseminate a variety of data with respect to the Shares on a daily basis, by means of CTA and Consolidated Quotation High Speed Lines, including quotation and last sale data, information of the previous day's close with respect to NAV, and the number of Shares outstanding. In addition, as with other ETFs, information regarding secondary market prices and volume of the Shares will be broadly available in real-time throughout the trading day.

Arbitrage

The Exchange believes that the Shares will not trade at a material discount or premium to the value of the assets held by the Trust based on potential arbitrage opportunities. Due to the fact that the Shares can be created and redeemed only in Creation Units at NAV,[15] the Exchange submits that arbitrage opportunities should provide a mechanism to mitigate the effect of any premiums or discounts that may exist from time to time. Given that the creation and redemption process of the Trust and its Fund is substantially similar to that of Index ETFs, the Exchange believes that market professionals will have the ability to arbitrage Shares of the Fund in a manner similar to Index ETFs. The availability of the Disclosed Portfolio and the Portfolio Indicative Value and other pricing information about portfolio holdings will permit arbitrageurs to identify when the market price of the Shares is higher or lower than the value of the portfolio. As a result, these market professionals will buy Shares when they are priced lower than the portfolio and sell Shares when they are priced higher than the portfolio, thereby moving prices back in line with the value of the portfolio. Actual and potential arbitrage of this nature should help the secondary market prices of the Shares to remain close to NAV.

Trading Rules

The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, specialist responsibilities, account opening, and customer suitability (Amex Rule 411). Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205–AEMI) will also apply. Specialist transactions of the Shares made in connection with the creation and redemption of Shares will not be subject to the prohibitions of Rule 190.[16]

Amex notes that the Amex Rule 154–AEMI(c)(ii) (''Election by Quotation of Stop and Stop Limit Orders'') and Amex Rule 126A–AEMI (''Protected Bids and Offers of Away Markets'') will apply to the trading of the Shares. In addition, Exchange members and member organizations will be subject to proposed Commentary .04 to Amex Rule 1000B prohibiting such member or member organizations from entering into the Exchange's order routing

approval upon 30 days' written notice to shareholders.

[10] The Exchange represents that, for initial and/or continued listing, the Shares must also be in compliance with Section 803 of the Amex *Company Guide* and Rule 10A–3 under the Act (17 CFR 240.10A–3).

[11] *See* the Trust's Form N–1A/A filed with the Commission on August 6, 2007 (File Nos. 333–141421 and 811–22038).

[12] ''Business Day'' is defined as a day in which the Trust will sell and redeem Creation Units of the Fund.

[13] The Exchange states that the Trust will comply with its obligations to disclose in its SAI its policies and procedures with respect to the Disclosed Portfolio and state in its Prospectus that a description of the Fund's policies and procedures is available in the SAI. *See* Investment Company Act Release No. 26418 (April 16, 2004), 69 FR 22300 (April 23, 2004).

[14] The Exchange states that the methodology used to calculate the Portfolio Indicative Value for the Fund is similar to those used by some existing ETFs listed on the Exchange that track fixed-income securities indices, as well as numerous fixed-income mutual funds.

[15] The Exchange states that creations and redemptions of the Shares will be in cash only.

[16] Commentary .04 to Amex rule 190 states that nothing in Rule 190(a) should be construed to restrcit a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market. *See* Commentary .04 to Amex Rule 190.

system multiple limit orders as agent (*i.e.*, customer agency orders). Further, proposed Commentary .05 to Rule 1000B provides that it may be considered inconsistent with just and equitable principles of trade for a member or person associated with a member to ''trade ahead'' of a related customer order in Managed Fund Shares based on material, non-public information obtained from such customer order.

Information Circular

The Exchange will distribute an Information Circular to Exchange members and member organizations prior to the commencement of trading of the Shares that describes the prospectus delivery requirements and, as relevant, the application of proposed Commentary .03 to Amex Rule 1000B. The Exchange notes that investors purchasing Shares directly from the Fund by delivery of a Creation Unit will receive a Prospectus.

In addition, the Information Circular will inform Exchange members and member organizations that procedures for purchases and redemptions of Shares in Creation Units are described in the Fund's Prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Units or multiples thereof. The Exchange will also inform members and member organizations of the characteristics of the Fund and the Shares and of applicable Exchange rules, as well as of the suitability requirements of Amex Rule 411 (Duty to Know and Approve Customers).[17]

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing IFSs. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the ability to list and trade an actively managed ETF pursuant to the rules proposed herein is consistent with Section 6(b) of the Act, and furthers the objectives of Section 6(b)(5) of the Act by promoting and facilitating transactions in securities while at the same time protecting investors and the public interest. The Exchange further believes that offering investors additional investment alternatives helps to promote competition between similar product classes, thereby benefiting the markets and investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no 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 states that 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2008–02 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–2008–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of 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–2008–02 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2734 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[17] The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member. *See* Amex Rule 411.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57293; File No. SR–CBOE–2008–12]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Temporary Membership Status Access Fee

February 8, 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 January 31, 2008, 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 prepared substantially by the Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A),[3] and Rule 19b–4(f)(2) 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

CBOE proposes to adopt a monthly access fee for persons granted temporary CBOE membership status pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02''). The text of the proposed rule change is provided below. Additions are indicated by *italics,* and deletions are [bracketed].

* * * * *

Chicago Board Options Exchange, Incorporated

Fees Schedule

February 1, 2008 [January 1, 2008]

1.—21. Unchanged.

22. TEMPORARY MEMBERSHIP STATUS ACCESS FEE *$7,354* [4,700] per month.*

* This access fee is assessed to each person granted temporary CBOE membership status under CBOE Rule *3.19.02* [3.19.01]. The access fee is due and payable for each calendar month on the first day of that calendar month. The first month for which the access fee will be assessed is *February 2008* [September 2007]. The access fee is non-refundable [except as specified below]. The access fee and any other applicable monthly fees will be assessed for a calendar month unless the person provides written notice to the Membership Department [at least five business days] prior to the start of that month that the person is relinquishing temporary membership status effective on a date prior to the start of that month. The access fee will be assessed through the integrated billing system. [The access fee will terminate when the SEC takes final action on SR–CBOE–2006–106. All access fees shall be payable to and held in an interest-bearing escrow account maintained by the Exchange until the SEC takes such final action. The Exchange will retain such fees if the SEC approves SR–CBOE–2006–106, and such fees will be returned to the payor, with interest, if the SEC disapproves SR–CBOE–2006–106.]

Remainder of Fee Schedule: Unchanged.

* * * * *

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 proposal. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 3.19.02 became operative on January 15, 2008[5] upon the approval by the Commission of CBOE rule filing SR–CBOE–2006–106.[6] At that time, the temporary CBOE membership status (''Temporary Membership'') provided to certain former exerciser members of CBOE (''Temporary Members'') pursuant to Interpretation and Policy .01 under CBOE Rule 3.19 (''Rule 3.19.01'') expired[7] and Rule 3.19.02 granted continued Temporary Membership status to those persons under Rule 3.19.02.[8]

Specifically, Rule 3.19.02 provides that a Temporary Member shall continue in the Temporary Membership status previously granted under Rule 3.19.01 following the Commission's approval of SR–CBOE–2006–106 as long as the person: (i) Did not previously terminate that Temporary Membership status and remained in good standing as of the close of business on the trading day immediately before the date of approval of SR–CBOE–2006–106 (*i.e.*, January 14, 2008); (ii) thereafter remains in good standing and continues to pay all applicable fees, dues, assessments, and other like charges that are assessed against CBOE members; and (iii) pays CBOE a monthly access fee set by CBOE, which shall be due and payable in accordance with the provisions of the CBOE Fee Schedule. Unlike the access fee under Rule 3.19.01, the proposed access fee to be charged under Rule 3.19.02 is to be paid directly to the Exchange and will not be escrowed.

[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)(2).

[5] Rule 3.19.02 was adopted in CBOE rule filing SR–CBOE–2007–107. Although SR–CBOE–2007–107 became effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act, 15 U.S.C. 78s(b)(3)(A)(i), on September 10, 2007 when SR–CBOE–2007–107 was submitted to the Commission, SR–CBOE–2007–107 provided that it would not become operative unless and until the Commission approved CBOE rule filing SR–CBOE–2006–106. *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107).

[6] In SR–CBOE–2006–106, CBOE proposed an interpretation of Article Fifth(b) of the CBOE Certificate of Incorporation (''Article Fifth(b)'') to address the impact of the then-proposed acquisition of The Board of Trade of the City of Chicago, Inc. (''CBOT'') by Chicago Mercantile Exchange Holdings Inc. (''CME/CBOT Transaction'') on the eligibility of persons who were members of CBOE (''exerciser members'') pursuant to Article Fifth(b). Under that interpretation, the consummation of the CME/CBOT Transaction on July 12, 2007 resulted in no person any longer qualifying as a member of the CBOT within the meaning of Article Fifth(b) and therefore resulted in the elimination of any person's eligibility thereafter to become or remain an exerciser member of CBOE. The Commission approved SR–CBOE–2006–106 on January 15, 2008. *See* Securities Exchange Act Release No. 57159 (January 15, 2008), 73 FR 3769 (January 22, 2008) (SR–CBOE–2006–106).

[7] Rule 3.19.01 granted temporary CBOE membership status to Temporary Members from the date of the consummation of the CME/CBOT Transaction on July 12, 2007 until the Commission took final action on SR–CBOE–2006–106 on January 15, 2008. *See* Securities Exchange Act Release No. 56016 (July 5, 2007), 72 FR 38106 (July 12, 2007) (SR–CBOE–2007–77).

[8] Rule 3.19.02 extended the Temporary Membership status provided to each Temporary Member under Rule 3.19.01 until the earlier of (i) the voluntary termination of that Temporary Membership status by the Temporary Member, (ii) the approval by the Commission of a further proposed rule change that provides for the termination of that status and the granting of trading permits or another form of trading access to Temporary Members, or (iii) the consummation of a transaction pursuant to which either CBOE is converted into a stock corporation or memberships in CBOE are converted into stock.

In CBOE rule filing SR–CBOE–2007–107,[9] which adopted Rule 3.19.02, the Exchange stated that it was going to submit a subsequent rule filing pursuant to section 19(b)(3)(A)(ii) of the Act [10] to specify the access fee to be charged under Rule 3.19.02. The Exchange also indicated in SR–CBOE–2007–107 that the access fee would be an amount reasonably related to the current lease market rate for transferable CBOE memberships.[11] The purpose of this rule filing is to specify that access fee.

For the reasons described below, the Exchange proposes to set the access fee under Rule 3.19.02 at $7,354 per month.

CBOE clearing firms are currently involved in facilitating most transferable membership leases by assisting in bringing together CBOE lessors and CBOE trading members for whom these clearing firms provide clearing services. Most transferable membership leases currently have floating monthly rates. In most of these cases, the floating monthly rate is the rate designated by the clearing firm for the floating rate leases that the clearing firm assisted in facilitating and is based on a percentage of the average of the last three transferable membership sale amounts.[12]

In light of the foregoing, the Exchange used the following process to set the proposed access fee. The Exchange polled each of the clearing firms that assists in facilitating at least 10% of the transferable membership leases and obtained the Clearing Firm Floating Monthly Rate designated by each of these clearing firms for the month of February, 2008. The Exchange then set the proposed access fee at an amount equal to the highest of these Clearing Firm Floating Monthly Rates. The Exchange used the highest of these amounts (instead of, for example, an average of these amounts) because otherwise the Exchange would be undercutting the lease rates of a large number of transferable membership leases.

Because the clearing firms that facilitate at least 10% of the transferable membership leases facilitate in total over 80% of the transferable membership leases and because the proposed access fee is representative of the lease rate for a significant number of the transferable membership leases, the Exchange believes that the proposed access fee is reasonably related to the current lease market rate for transferable memberships consistent with SR–CBOE–2007–107.[13]

The first month for which the access fee will be assessed is February, 2008. Temporary Members already paid an access fee under Rule 3.19.01 for the month of January, 2008 that was held in escrow pending Commission action on SR–CBOE–2006–106 and was then retained by the Exchange upon the approval of SR–CBOE–2006–106 in accordance with the provisions of Rule 3.19.01. Because this access fee for the month of January, 2008 under Rule 3.19.01 is non-refundable, the Exchange is commencing assessment of the proposed access fee under Rule 3.19.02 starting with the month of February, 2008 in the interest of fairness so that Temporary Members are not charged two access fees for the same month.

The proposed access fee will remain in effect until such time that the Exchange submits a further rule filing pursuant to section 19(b)(3)(A)(ii) of the Act [14] to modify the access fee or the Temporary Membership status under Rule 3.19.02 is terminated. Accordingly, the Exchange will retain the flexibility to adjust the proposed access fee in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

With two exceptions, the provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee under Rule 3.19.02 are the same as the provisions related to the assessment of the access fee under Rule 3.19.01. Thus, like with the access fee under Rule 3.19.01: (i) The proposed access fee under Rule 3.19.02 will be due and payable each calendar month on the first day of the calendar month; (ii) the proposed access fee will be non-refundable; and (iii) the proposed access fee will be assessed through the integrated billing system.

The two differences between the provisions of the CBOE Fee Schedule related to the assessment of the proposed access fee under Rule 3.19.02 and the provisions related to the assessment of the access fee under Rule 3.19.01 are: (i) The provisions related to the escrowing of the access fees that were collected under Rule 3.19.01 have been removed and (ii) the proposed access fee and any other applicable monthly fees will now be assessed for a calendar month unless the Temporary Member provides written notice to the Membership Department prior to the start of that month (instead of five business days prior to the start of that month as was previously the case) that the Temporary Member is relinquishing Temporary Membership status effective on a date prior to the start of that month. With respect to the second change, the Exchange has found in this context that it presently does not need the additional lead time to process these relinquishments of Temporary Membership status.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[15] in general, and furthers the objectives of section 6(b)(4) of the Act,[16] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among persons using its facilities.

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 the purposes of the Act.

[9] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107).

[12] As used herein, the term ''Clearing Firm Floating Monthly Rate'' means the floating monthly rate that a clearing firm designates, in connection with transferable membership leases that the clearing firm assisted in facilitating, for leases that utilize that floating monthly rate.

[13] As reflected in SR–CBOE–2007–107, the Exchange believes that the proposed access fee for Temporary Members under Rule 3.19.02 constitutes an equitable allocation of reasonable dues, fees, and other charges among persons using its facilities. The proposed fee is equivalent to the lease rate paid by a large percentage of lessees of transferable CBOE memberships. Accordingly, the proposed access fee eliminates the previous disparity that existed under Rule 3.19.01 between the access fee charged by the Exchange to Temporary Members (which was based upon a lease rate paid on CBOT by lessees of what CBOT denominates as a full CBOT membership) and the lease rates paid on CBOE by lessees of transferable memberships (which generally were significantly higher than the previous Temporary Member access fee). Because Temporary Members' access to the Exchange is terminable only under limited circumstances, while the Exchange access of lessees of transferable memberships is terminable by lessors, the Exchange believes that it would be equitable to assess Temporary Members an access fee higher than the current lease market rate for transferable memberships. However, at the present time, the Exchange is only seeking to eliminate the current disparity, as the Exchange committed to do in SR–CBOE–2007–107. *See* Email from Arthur B. Reinstein, Deputy General Counsel, CBOE, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated February 8, 2008 (adding the preceding text to footnote 13).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

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 [17] and subparagraph (f)(2) of Rule 19b–4 [18] 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.

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–2008–12 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–2008–12. 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 No. SR–CBOE–2008–12 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2696 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57295; File No. SR–NYSE–2008–11]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 13 and 124 To Remove Certain Manual Order Types

February 8, 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 31, 2007, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE. NYSE 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 it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to amend to amend Rules 13 and 124 to remove certain manual order types. The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE seeks to amend Rules 13 and 124 to remove certain manual order types that are no longer compatible in today's electronic market. These order types are defined in Rule 13 (*i.e.*, the ''Alternative Order—Either/Or Order'', ''Orders Good Until a Specified Time'', ''Scale Order'' and ''Switch Order—Contingent Order'') and Rule 124 (*i.e.*, the ''Limited Order, With or Without Sale'' and ''Basis Price Order''). The Exchange also seeks to make conforming changes to the enumeration of the Supplementary Material of Rule 124 based on the elimination of the text related to the Basis Price Order.

Hybrid Market Trading Environment

The Hybrid Market rules were implemented in a series of phases beginning with a pilot on December 14, 2005 through February 27, 2007.[5] During the implementation process, the Exchange continually reviewed the operation of the Hybrid Market and changes in the behavior of market participants resulting from the new rules in order to assess whether the rules resulted in operations as envisioned by the Hybrid Market initiative. As a result of this continual

[1] 5 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] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) (establishing the Hybrid Market).

review, NYSE amended certain rules to better accomplish the goals intended with the creation of the Hybrid Market.[6]

In the current more electronic Hybrid Market, orders received by Exchange systems that are marketable upon entry are eligible to be immediately and automatically executed by Exchange systems. The Exchange believes that, in this current environment, order types that require manual intervention pose significant impediments to the efficient functioning of the Hybrid Market. As such, the Exchange seeks to eliminate the order types described below.

Description of Manual Order Types

An Alternative Order—Either/Or Order allows a customer to submit two separate orders simultaneously for the same security. For example, an order may be entered to sell (buy) XYZ at a limit price or sell (buy) on stop. If the order is for one unit of trading (generally 100 shares), when one of the designated alternative orders is executed (*i.e.*, the sale of the security at its limit price), then the other alternative (*i.e.*, the sale of a security on a stop) is cancelled. Pursuant to Rule 13, where the order is for more than one unit of trading, the number of units executed determines the amount of the alternative order to be treated as cancelled. Therefore, if the order was to sell (buy) 300 XYZ at a limit price or sell (buy) 300 shares on stop and only 200 shares of XYZ were executed at the limit price, then only 200 shares of the sell stop order would be cancelled.

Orders Good Until a Specified Time are market or limited price offers which are to be represented in the Trading Crowd until a specified time, after which time such orders or the portion thereof not executed are to be treated as cancelled.

A Scale Order is an order to buy (sell) a security which specifies the total amount to be bought (sold) at specified price variations.

A Switch Order-Contingent Order is an order for the purchase (sale) of one security and the sale (purchase) of another security at a stipulated price difference.

The Limited Order, With or Without Sale, is a type of odd-lot order that may be filled on an effective round-lot transaction or an effective bid (when the price of a limit order to sell is at or above the Exchange's best bid) or offer (when a limit order to buy is at or below the Exchange best offer), whichever occurs first after receipt of the order by Exchange systems.

The Basis Price Order is a type of odd-lot order that may be filled at a specified ''Basis Price'' [7] provided that the Basis Price has been established and approved by a Floor Official, the order is marked ''On Basis'' and was received at least a half hour before the close of the market. Basis Prices are established by the specialist where there has been no round-lot sale in the subject security during the trading session, the spread between the closing bid and offer prices is two points or more and the specialist has been given an On Basis order. The Basis Price must be reviewed and approved by a Floor Official. A Basis Price order to sell is filled at the Basis Price plus any differential,[8] and a Basis Price order to buy is filled at the Basis Price minus any differential.

Proposed Elimination of the Manual Order Types

The Exchange proposes to eliminate the above-described orders as acceptable order types by Exchange systems. The manual order types described above are remnants of a time when the Exchange functioned completely as a manual auction market. Each of the aforementioned order types cannot be processed electronically. Today, when one of these orders is submitted to the Exchange, it is printed on paper for manual processing on the Floor. As a result of the current speed of order execution in the Hybrid Market, orders that are printed to paper for manual execution run the very real risk of ''missing the market.''

In addition, the inefficiency of these order types is made obvious by the fact that they are infrequently used by market participants. A review of the different types of orders received by the Exchange during the week of September 17, 2007 through September 21, 2007 revealed that none of these orders were utilized by market participants.

Inherent in most of these order types are specific trading strategies whose desired effect can be replicated by means of electronic trading. For example, the desired result of a Scale Order may be achieved by the use of the Floor broker agency interest (''e-Quote'') at specified price points. Member organizations may achieve the desired outcome of a Switch Order-Contingent Order by combining orders with instructions for automatic execution. The Exchange believes that the elimination of these order types will further the protection of investors since the manual handling of the trading strategies inherent to these order types places its customers at risk of missing the market or inferior price executions. The use of current electronic functionality available in the Hybrid Market will provide Exchange customers with better execution opportunities.

The Exchange states that its commitment to provide its market participants with the ability to have their orders executed in the most efficient manner necessitates the elimination of the manual order types described above. As such, the Exchange seeks to delete the references to those order types from Rules 13 and 124. In addition, the Exchange seeks to make conforming changes to Rule 124 in order to ensure accurate consecutive enumeration of the rule text.

2. Statutory Basis

The proposed rule change is consistent with the provisions of section 6 of the Act,[9] in general, and with sections 6(b)(5) of the Act,[10] in particular, in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NYSE believes that the proposed rule change accomplishes these goals by rescinding legacy order types that place customers at risk of missing the market and possibly

[6] *See, e.g.*, Securities and Exchange Act Release Nos. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR–NYSE–2006–65) (amendment to clarify certain definitions and systematic processing of certain orders in the Hybrid Market); 55316 (February 20, 2007), 72 FR 8825 (February 27, 2007) (SR–NYSE–2007–14) (amendment of Exchange Rule 70.30 to change the concept of a Crowd from being ''specific areas on the Floor where Floor brokers are generally able to see and hear the business'' conducted at each post/panel to ''specific identifiable areas where Floor brokers are able to conduct business at each post/panel within the Crowd''); 54427 (September 12, 2006), 71 FR 54862 (September 19, 2006) (SR–NYSE–2006–58) (amendment of Exchange Rule 70.30 to change the concept of a Crowd as ''any five contiguous panels'' to ''specific identifiable areas on the Floor where Floor brokers are generally able to see and hear the business conducted at each post/panel within the Crowd''); 54086 (June 30, 2006), 71 FR 38953 (July 10, 2006) (SR–NYSE–2006–24) (amendment to Exchange Rule 104(d)(i) to conform the minimum display requirements for reserve interest for specialists and Floor brokers such that specialists, like Floor brokers, only be required to provide at least 1,000 shares displayed interest at the bid and offer in order to have reserve interest on that side of the quote).

[7] *See* Exchange Rule 124.10 (explaining how Basis Prices are established).

[8] A ''differential'' is a stated charge (historically ⅛ of a point) per share of odd-lots executed by the odd-lot dealer. The differential is a legacy of a time when the Exchange had odd-lot dealers who were solely responsible for the execution of odd-lots on the Exchange.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

receiving inferior priced executions. NYSE believes that rescission of these order types promotes the use of electronic functionality and therefore would provide its customers with better execution opportunities.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[13] However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to immediately remove a current impediment to the efficient operation of its market and to provide customers with better execution opportunities. The Commission hereby grants the Exchange's request and designates the proposal as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2008–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–11 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2695 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NYSE has complied with this requirement.

[14] *Id.*

[15] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57287; File No. SR–NYSE–2008–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 104 (Dealings by Specialists)

February 7, 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 February 4, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder, which renders it effective upon filing with the Commission.[4] 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 NYSE proposes to amend Exchange Rule 104 (Dealings by Specialists) to conform its language to other recent amendments of Rule 104 and Rule 70 (Bids and Offers).

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

comments it received on the proposed rule change. The 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 Exchange NYSE Rule 104 (Dealings by Specialists) to conform its language to recent amendments of NYSE Rule 104 and NYSE Rule 70 (Bids and Offers). Specifically, on October 2, 2007, the Exchange amended NYSE Rules 70 and 104 to reduce the minimum display requirement to 100 shares for Floor brokers and specialists to utilize the reserve functionality of the e-Quote and s-Quote.[5] In doing so, the Exchange referred to the new display requirement in terms of a ''round-lot'' instead of using the term ''shares.'' The change in language takes into account that, for certain equity securities that trade on the Exchange, a round-lot is other than 100 shares.[6]

Pursuant to Exchange Rule 104(e), specialists are allowed to provide price improvement to an order through the use of an algorithmically generated trading message provided the specialist is represented in the bid or offer in a ''meaningful amount.'' This is defined in the Rule as 1,000 shares for the 100 most active securities on the Exchange, and 500 shares for all other securities on the Exchange.

The Exchange proposes to amend the language in NYSE Rule 104(e)(ii) in order to conform it to the language contained in recent amendments to NYSE Rule 70.20(c) and NYSE Rule 104(d), by changing the reference to ''1,000 shares'' to ''ten round-lots'' and the reference to ''500 shares'' to ''five round-lots.''

The Exchange believes that the proposed amendment clarifies the operation of the rule by adding language that takes into account those equity securities that trade on the Exchange in units other than 100 shares.

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the instant proposal is consistent with the objectives of the Act in that the amendment serves to remove the ambiguity that currently exists in the rule text of Exchange Rule 104(e)(ii) by clarifying the number of shares that a specialist must display in order to use his or her ability to provide price improvement in those equity securities that trade on the Exchange in units other than 100 shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes the waiver of this period will allow it to immediately clarify certain terms within NYSE Rule 104, which it believes is in the public interest as it will avoid ambiguity or confusion by market participants as to how NYSE Rule 104 operates. The Commission believes such waiver is consistent with the protection of investors and the public interest because it presents no new issues and would provide clarification of the Exchange's rules with respect to equity securities that trade on the Exchange in units other than 100 shares. For this reason, the Commission designates the proposal to be operative upon filing with the Commission.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–12 on the subject line.

[5] *See* Securities Exchange Act Release No. 56599 (October 2, 2007) 72 FR 57622 (October 10, 2007) (SR–NYSE–2007–93).

[6] Exchange Rule 55 (Unit of Trading—Stocks and Bonds) provides in pertinent part, that: ''The unit of trading in stocks shall be 100 shares, except that in the case of certain stocks designated by the Exchange the unit of trading shall be such lesser number of shares as may be determined by the Exchange, with respect to each stock so designated.''

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] Rule 19b–4(f)(6) also requires the Exchange to give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day pre-operative period, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2008–12 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2732 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57277; File No. SR–Phlx–2008–09]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Trading Hours for Physical Delivery FCOs

February 6, 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 February 1, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. The Exchange has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act [3] and Rule 19b–4(f)(1) 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 Phlx proposes to modify its hours of business for dealings on the Exchange to change the opening of physical delivery foreign currency options (''FCOs'') trading from 7:30 a.m. Eastern Time (''ET'') to 9:30 a.m. ET. The change will become effective on February 4, 2008. The text of the proposed rule change is available on the Exchange's Web site at *http://www.Phlx.com/exchange/phlx_rule_fil.html*, at the Exchange, 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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make the Exchange's physical delivery FCO program more cost-effective by reducing the duration of the physical delivery FCO trading session. Currently, Phlx Rule 101, ''Hours of Business,'' states that FCO trading sessions shall be conducted at such times as the Exchange's Board of Governors (''Board'') shall specify between 6 p.m. ET, Sundays and 3 p.m. ET, Fridays, provided that U.S. dollar-settled FCOs shall trade during the same hours as narrow-based index options.[5] Accordingly, the Board adopted the current hours for physical delivery FCO trading sessions, opening at 7:30 a.m. ET and closing at 2:30 p.m. ET.[6]

The Exchange proposes to adopt a reduced time period for physical delivery FCO trading sessions by specifying that, beginning February 4, 2008, FCO trading sessions will open at 9:30 a.m. ET and close at 2:30 p.m. ET. The Exchange represents that it has delisted most of its physical delivery FCO contracts and intends to delist the remaining physical delivery FCO on or before March 31, 2008. The Exchange has already limited trading in the remaining physical delivery FCO contracts to ''closing only'' transactions. The Exchange therefore believes that a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 19b–4(f)(1).

[5] The Exchange is not proposing to change the trading hours applicable to U.S. dollar-settled FCOs.

[6] In 1993, the Exchange filed a proposed rule change to amend Phlx Rule 101 to provide that all FCO trading, except FCOs on the Canadian dollar, will be conducted between 1:30 a.m. ET and 2:30 p.m. ET each business day. *See* Securities Exchange Act Release No. 33246 (November 24, 1993), 58 FR 63421 (December 1, 1993) (SR–Phlx–93–42). Subsequently, the trading hours were modified to move the opening of FCO trading from 1:30 a.m. ET to 2:30 a.m. ET for all Exchange-listed FCOs except the Canadian dollar. *See* Securities Exchange Act Release No. 34898 (October 26, 1994), 59 FR 54651 (November 1, 1994) (SR–Phlx–94–47). In May 2004, the Exchange expanded the trading hours for options on the Canadian dollar to conform to the trading hours for all other FCOs on the Exchange. *See* Securities Exchange Act Release No. 49690 (May 12, 2004), 69 FR 28972 (May 19, 2004) (SR–Phlx–2004–24). On December 1, 2006 the Exchange changed the trading hours for all physical delivery FCOs to be from 7:30 a.m. ET until 2:30 p.m. ET. *See* Securities Exchange Act Release No. 54802 (November 21, 2006), 71 FR 68875 (November 28, 2006) (SR–Phlx–2006–72).

reduction in the duration of the trading session is appropriate at this time.

In connection with the proposed rule change adopting Phlx Rule 101, the Exchange committed to make future filings under Section 19(b)(3)(A) of the Act[7] any time it expands or changes FCO trading hours in connection with Phlx Rule 101.[8] The Exchange intends to notify its membership of the change in trading hours for physical delivery FCOs by issuing a circular to members. The new trading hours for physical delivery FCOs will be in effect beginning February 4, 2008.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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 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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[11] and Rule 19b–4(f)(1)[12] thereunder, because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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 No. SR–Phlx–2008–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–09. 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 Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2008–09 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–2751 Filed 2–13–08; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] *See* Securities Exchange Act Release No. 26087 (September 16, 1988), 53 FR 36930 (September 22, 1988) (SR–Phlx–88–25).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

[Docket No. OST–2007–27407]

National Surface Transportation Infrastructure Financing Commission

AGENCY: Department of Transportation (DOT).

ACTION: Notice of meeting location and time.

SUMMARY: This notice lists the location and time of the ninth meeting of the National Surface Transportation Infrastructure Financing Commission.

FOR FURTHER INFORMATION CONTACT: John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov*.

SUPPLEMENTARY INFORMATION: By **Federal Register** Notice dated March 12, 2007, and in accordance with the requirements of the Federal Advisory Committee Act (''FACA'') (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU'') (Pub. L. 109–59, 119 Stat. 1144), the U.S. Department of Transportation (the ''Department'') issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the ''Financing Commission''). Section 11142(a) of SAFETEA–LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing surface transportation infrastructure.

Notice of Meeting Location and Time

The Commissioners have agreed to hold their ninth meeting from 8:30 a.m. to 4 p.m. on Wednesday, March 5, 2008. The meeting will be open to the public and is scheduled to take place at the Department's headquarters building, located at 1200 New Jersey Avenue, SE., Washington, DC 20590, in Conference Room W82–302.

If you need accommodations because of a disability or require additional information to attend this meeting,

please contact John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov*.

John V. Wells,

Chief Economist, U.S. Department of Transportation, Designated Federal Official.

[FR Doc. E8–2678 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2007–29320]

Operating Limitations at John F. Kennedy International Airport; Notice of Order

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

ACTION: Notice of Order.

SUMMARY: The Federal Aviation Administration (FAA) is amending the Order Limiting Scheduled Operations at John F. Kennedy International Airport that published in the **Federal Register** on January 18, 2008. This amendment corrects technical errors in the Order. Specifically, this amendment clarifies that the use-or-lose provisions of the Order will mirror the IATA Worldwide Scheduling Guidelines; changes the office within the FAA responsible for handling appeals from the Air Traffic Organization to the Office of the Chief Counsel; and provides for a five-day notification period in the event a carrier transfers an operation within a marketing code for irregular operations. This document also clarifies several aspects of the Order without substantively changing the applicable requirements.

FOR FURTHER INFORMATION CONTACT: Rebecca MacPherson, Assistant Chief Counsel for Regulations, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION: On January 18, 2008 the FAA published the *Order Limiting Scheduled Operations at John F. Kennedy International Airport* (JFK) (Order) in the **Federal Register** (73 FR 3510). The Order establishes a temporary limitation on the number of scheduled operations at JFK. The Acting Administrator of the FAA issued the order as a result of a persistent number of flights above capacity at JFK during the peak operating hours. The FAA intends the Order, as amended today, to relieve the substantial inconvenience to the traveling public caused by excessive congestion-related flight delays at the airport, which magnify as they spread through the National Airspace System. Among other things, the order will reduce the average length of delays and provide for a more efficient use of the nation's airspace. The order takes effect at 6 a.m., Eastern Time, on March 30, 2008, and will expire at 11:59 p.m., Eastern Time, on October 24, 2009. The limits apply to all air carrier and foreign air carrier scheduled operations, excluding helicopters, from 6 a.m., Eastern Time, through 10:59 p.m., Eastern Time.

This amendment corrects technical errors in the Order. Specifically, this amendment clarifies that the use-or-lose provisions of the Order will mirror the IATA Worldwide Scheduling Guidelines (WSG); changes the office within the FAA responsible for handling appeals from the Air Traffic Organization to the Office of the Chief Counsel; and provides for a five-day notification period in the event a carrier transfers an operation within a marketing code for irregular operations. This document also clarifies several aspects of the Order without substantively changing the applicable requirements.

Changes to the Order

Use-or-Lose Provisions

As noted in the preamble to the Order published in January 2008, the FAA will calculate use-or-lose based on the WSG. The use-or-lose provision articulated in the Order largely mirrored the approach we have historically taken under the High Density Rule (HDR) [1] and the orders limiting operations at Chicago O'Hare International Airport (ORD) and LaGuardia Airport (LGA). The requirement articulated in the Order was in error, and the language in paragraph nine of the Order has been amended to reflect the agency's intent.

Under a strict seasonal use-or-lose provision, an operation that did not commence until June, or ended in September, would be returned to the slot coordinator for reallocation for the following summer season because the slot would not be used at least 80% of the time. The WSG protects seasonal or newly initiated service by allowing the carrier to declare in advance the stop and start dates of service.

Under the WSG, carriers are required to inform the coordinator of their intended summer and winter operations by January 31 and August 31, respectively. Any operations not declared by these dates are surrendered and are not given historical status for the subsequent applicable scheduling season. However, they also are not counted against a carrier's slot holdings when determining use-or-lose. Thus, if a carrier were to advise the FAA that it would commence operations on June 1, 2008 and cease those operations on August 31, the only timeframe for determining use-or-lose would be June 1 through August 31, even though the summer scheduling season runs from March 30 to October 25. Assuming the carrier conducted enough flights under an Operating Authorization (OA) in the June through August timeframe to receive historical recognition, it would be given the OA for summer 2009 from June 1 through August 31.

The FAA believes this approach has merit. A strict seasonal use-or-lose policy would require carriers to operate flights on the shoulders of a scheduling season just to assure they would not lose the related OA. This unnecessary service would have the effect of increasing congestion during the spring and fall.

Accordingly, we are amending the Order to specify that for purposes of use-or-lose and historical allocation for subsequent seasons, carriers must tell the FAA when a particular operation will start and stop. Because it is too late to meet the submission date specified in the WSG for summer 2008, carriers who wish to have less than the entire summer season subject to the use-or-lose provision must report usage for this upcoming summer by February 29, 2008. Carriers are encouraged to submit information on all service scheduled for summer 2009 by February 29, to assist the FAA in finalizing schedules as soon as possible. Notification to the FAA for winter 2008/2009 and summer 2009 schedules will follow the WSG. For purposes of the winter 2008/2009 scheduling season, historic usage rights will be determined by the appendix to the Order since there were no capacity restraints at JFK in the 2007 winter scheduling season. The FAA will receive initial schedule requests for the winter 2008/2009 scheduling season by the May 15 deadline and coordinate with carriers at the June 2008 IATA Schedules Conference.

Paragraph nine of the Order also requires carriers to report on usage within 14 days for every two-month reporting period. Since the WSG use-or-lose requirement applies to an entire scheduling season, there is no need for carriers to report to the FAA every two months. That requirement has been changed. First, the FAA does not believe it needs reports every two months. One

[1] 14 CFR part 93, subpart K.

option would be for the FAA to merely require a report be filed at the end of the scheduling season. However, the coordination process for allocating OAs for the following season begins approximately six weeks before the end of the season. The beginning of this coordination process requires the coordinator to notify carriers of tentative historical allocations. The FAA needs to know a carrier's usage rate before it can provide even a tentative historical allocation. Accordingly, the FAA has decided to replace the bimonthly reporting requirement with a requirement that carriers provide an interim report approximately two months before the end of the scheduling season, and a final report at the end of the season.

Some carriers have requested that they be allowed 30 days to submit their reports rather than 14. As discussed in the preamble to the Order published in January 2008, OAs are allocated on a daily basis, and the use-or-lose requirements apply separately to each day in the week that a carrier conducts a specific operation. Under the HDR, the use-or-lose provisions applied to a specific operation for which a slot had been allocated regardless of how many days a week the slot was used.

While the FAA does not believe a seasonal reporting requirement is significantly more burdensome than a bi-monthly requirement, we acknowledge that the determination of use-or-lose based on a daily OA allowance, rather than the weekly allowance contemplated under past use-or-lose regimes, means that a carrier could have to account for up to seven times as many OAs as it would under the requirements in the HDR and the ORD and LGA orders. Accordingly, we believe it is reasonable to extend the period for submitting a final usage report from 14 days to 30.

Because carriers may choose to initiate operations after the commencement of a scheduling season, or cease operations prior to the end of the season, there may be some available capacity in the shoulder periods of both the summer and winter scheduling seasons. In general, the FAA believes not reallocating this capacity is beneficial because it should result in further delay reductions. However, the FAA also recognizes that some of this capacity could be reintroduced into the system without significantly impacting delay. The agency also realizes that a carrier may have a short-term need to conduct operations during these time periods. Accordingly, a carrier may request that the FAA allow it to temporarily operate a flight at a time period where there is some newly available capacity. Paragraph 10 has been amended to reflect this possibility. The FAA retains full discretion to determine whether to allow these additional operations. in addition, these operations will not be afforded historical status when determining OAs for the next applicable season. Any longer-term capacity returned by virtue of the Order's use-or-lose provisions would be reallocated for the next applicable season via an auction procedure.

The Appendix to the Order shows allocations based on a peak week in August 2007. Many carriers, especially foreign flag carriers, have provided the FAA with information on dates of operation either with the initial schedule submission at the IATA Schedules Conference or in subsequent schedule requests. The FAA has previously acted on that information and the Appendix is not meant to supersede any prior confirmations that carriers may have received. Most domestic operators have not specified seasonal adjustments in their requests. Once carriers have told us when they expect to operate flights for purposes of use-or-lose and historical allocation, the FAA will update the allocation records to reflect actual anticipated operations. Carriers seeking confirmation of their allocation may contact the slot office directly. However, schedules previously confirmed by the FAA do not require reconfirmation.

Appeal of Decisions

Paragraph 1c of the Order originally specified that the FAA Vice President, System Operations Services, is the final decision-maker for determinations regarding the assignment of an OA to conduct an arrival or departure at JFK during the affected hours. This provision was designed to address clerical errors or other adjustments to the Appendix to the order. However, the FAA realizes that there would be other decisions that a carrier may wish to appeal to the FAA. Because these issues would likely relate to a legal interpretation by the Office of the Chief Counsel rather than a purely operational issue, the FAA has decided the Chief Counsel should be the final decision-maker for all appeals to the agency under the Order. In addition, since the Office of the Chief Counsel handled all appeals under the HDR, it has the greatest experience in this area. Obviously, the operational arms of the FAA would be consulted on all matters under appeal. Paragraph 1c of the Order has been amended accordingly.

Transaction Paperwork for Irregular Operations

Paragraph seven of the Order addresses the transfer of OAs, including day-of-transfers among carriers under the same marketing control to address irregular operations. The Order originally specified that the FAA must be informed of these transactions within three days (72 hours). This provision was intended to mirror the comparable provision in the LGA Order. That order was amended to extend the reporting requirement to five days (72 FR 63224, November 8, 2007). As the FAA intended to mirror the existing requirement at LGA, paragraph seven has been changed to specify that the FAA must be notified of same day transfers within five days.

Clarification of the Order

OA Management

The FAA has received questions regarding the management of OAs in 15 or 30-minute increments. The appendix to the Order allocates OAs in 15-minute increments. However, the FAA will track arrivals and departures in 30-minute intervals.

Codeshare Partners

Some carriers have indicated that the requirement under the Order that OAs be held by the operating carrier rather than the marketing carrier is inconsistent with common practice internationally. The FAA continues to believe that the OAs should actually be held by the operator actually conducting the flight. This position is consistent with how we have handled slots under the HDR and arrival and operations authorizations at ORD and LGA.

The Amended Order

Because this amendment merely corrects technical errors and provides further clarification, the FAA is not seeking public comment on the changes. For the convenience of the affected parties, the Order is recited below in its entirety.

With respect to scheduled flight operations at JFK, it is ordered that:

1. This Order assigns operating authority to conduct an arrival or a departure at JFK during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at JFK as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to JFK while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decision-maker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at JFK from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect on March 30, 2008, and expires at 11:59 p.m., Eastern Time, on October 24, 2009.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carriers or foreign air carriers initiating or conducting scheduled or regularly conducted commercial service to JFK may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. A carrier may lease or trade an Operating Authorization to another carrier for any consideration, not to exceed the duration of this Order. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 26707277 or e-mail *7-AWA-Slotadmin@faa.gov*, and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation.

8. A carrier may not buy, sell, trade, or transfer an operating authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the time-frame authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete operations.

A. For the summer 2008 scheduling season, the report must be received by the FAA no later than February 29, 2008, unless the carrier intends to utilize its Operating Authorizations for the entire scheduling season.

B. For the winter 2008/2009 scheduling season, the report must be received by the FAA no later than August 31, 2008.

C. For the summer 2009 scheduling season, the report must be received by the FAA no later than January 31, 2009.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season:

B. No later than January 15 for the winter scheduling season.

iii. The completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the unallocated Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that a reduction in the number of allocated Operating Authorizations is required to meting operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own

or on application by any carrier for good cause shown.

Issued in Washington, DC, on February 8, 2008.

Kerry B. Long,

Chief Counsel, Federal Aviation Administration.

[FR Doc. 08–661 Filed 2–8–08; 3:55 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement: Tappan Zee Bridge/I–287 Corridor Between Suffern, NY (Rockland County) and Port Chester, NY (Westchester County)

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), United States Department of Transportation (DOT).

ACTION: Revised Notice of Intent.

SUMMARY: The FHWA and FTA are jointly issuing this Revised Notice of Intent (NOI) to advise the public of modifications to the environmental review process for the Tappan Zee Bridge/I–287 Corridor Environmental Impact Statement (EIS). These revisions include the intent of FHWA and FTA to use a tiered process to facilitate project decision-making, and the intent of FHWA and FTA to utilize the environmental review provisions afforded under Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The EIS will build upon the extensive alternatives analysis, environmental and technical studies and public comments and outreach conducted to date, which are available online at the project's Web site (*www.tzbsite.com*). This NOI revises the NOI that was published in the **Federal Register** on December 23, 2002.

The proposed tiering approach will allow the joint lead agencies to focus on both broad overall corridor issues in a Tier 1 transit analysis of general alignment and mode choice while simultaneously assessing site specific impacts, costs and mitigation measures in a Tier 2 bridge and highway analysis. The scope of analysis in the Tier 1 and Tier 2 will be appropriate to the level of detail necessary for those documents and will receive input from the public and reviewing agencies. The intent of the joint lead agencies is for the Tier 1 and Tier 2 analyses to be developed concurrently in order to maximize the efficiencies and potential for multimodal solutions.

The Tier 1 transit analysis will provide the basis for a corridor level decision on transit mode(s), alignment(s), and logical termini within the Corridor and sufficient detail of impact assessments and preliminary engineering to allow the Tier 2 highway and bridge elements to proceed to final design and construction. Because the transportation needs of the corridor require a multimodal solution, the highway, bridge, and transit elements are intricately tied to one another and require iterative and concurrent development, analysis and consideration up to the decision on mode and alignment. Once the transit mode and alignment decisions are made, the analysis can focus on the needs of the corridor which includes the structural needs of the existing Tappan Zee Bridge and associated highway network, while preserving the transit corridor within the existing right of way.

Additional purposes of this revised NOI are to:

- Advise the public of lead agency roles.
- Outline how the provisions of SAFETEA–LU Section 6002 will be met.
- Update interested parties regarding the current approach to preparing the EIS.
- Provide updated information on the proposed project, purpose and need for the project, and range of alternatives.
- Re-invite participation in the EIS process, including comments on the refined scope of the EIS proposed in this notice.
- Announce the dates, times and locations of upcoming scoping update meetings.

FOR FURTHER INFORMATION CONTACT: Michael P. Anderson, Project Director, NYSDOT, 660 White Plains Road, Suite 340, Tarrytown, NY 10591, Telephone: (914) 358–0600; or Willet Schraft, Senior Operations Engineer, FHWA, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, NY 12207, Telephone: (518) 431–4125; or Donald Burns, Senior Planner, FTA, One Bowling Green, Room 429, New York, NY 10004, Telephone: (212) 668–2170.

SUPPLEMENTARY INFORMATION: On December 23, 2002, the FHWA and FTA, in cooperation with the New York State Thruway Authority (NYSTA) and the Metro-North Railroad, a subsidiary of the Metropolitan Transportation Authority (MTA/MNR) issued a Notice of Intent to prepare an Alternatives Analysis (AA) and an Environmental Impact Statement (EIS) for the I–287 Corridor in Westchester and Rockland Counties, NY (FR Volume 67, No. 246). Extensive AA public involvement activity has been conducted since publication of that NOI such that a revised tiered approach is warranted. Of considerable note, is that the New York State Department of Transportation (NYSDOT) has become a sponsoring agency and taken on the role of lead State project manager. As a sponsoring agency, NYSDOT, as well as NYSTA and MTA/MNR, are considered Joint Lead Agencies for the project under SAFETEA–LU.

1. Scoping

In January 2003, after the December 2002 NOI was published, three scoping meetings were held: one in Westchester County; one in Rockland County; and one in Orange County. Public and agency comments received during those scoping meetings have been incorporated into the AA. As a result of the initial scoping process which included a Level 1 and Level 2 alternatives screening process, the alternatives have been reduced from 150 alternative elements to six alternatives. As a result of the changes in the project conditions and approach that have precipitated the issuance of this revised NOI, scoping update meetings will be conducted to obtain current comments on the scope of the EIS. To assist interested parties in formulating their comments, a scoping informational packet will be prepared and made available upon request from the NYSDOT representative identified above or online at the project's Web site (*www.tzbsite.com*). The scoping packet will include the project's purpose and need, goals and objectives, range of alternatives, environmental issues that will be addressed during the course of the study and the public and agency coordination plan, pursuant to SAFETEA–LU. In addition, the scoping packet will include the evaluation criteria that will be used to conduct a third level (''Level 3'') alternatives screening process, which will further analyze the remaining alternatives.

In early 2008, three additional public scoping update meetings will be conducted, one each in Westchester, Rockland and Orange Counties, to solicit additional public comments on the scope of the EIS. Each meeting will run from 4 to 9 p.m. and consist of an informal open house setting and two formal presentations. Formal presentations will be made at 5 p.m. and again at 7 p.m. After each presentation,

the public will be provided the opportunity to comment. Those wishing to speak must sign up by either 5:30 p.m. or 7:30 p.m., respectively. A court reporter will be available to record the formal meeting and public comments. The public meetings will be held in the following locations:

Westchester County Public Scoping Update Meeting: Tuesday, February 26, 2008, The Performing Arts Center, Purchase College, State University of New York, 735 Anderson Hill Road, Purchase, NY 10577

Orange County Public Scoping Update Meeting: Wednesday, February 27, 2008, Orange-Ulster BOCES Campus, 53 Gibson Road, Goshen, NY 10924

Rockland County Public Scoping Update Meeting: Thursday, February 28, 2008, the Palisades Center, 1000 Palisades Center Drive, West Nyack, NY 10994.

The public comment period will be open for a maximum of 30 days following the February 28 meeting. Comments will be accepted until Monday, March 31, 2008.

Written comments on the scope of the project can be sent to Michael P. Anderson, Project Director, NYSDOT, Tappan Zee Bridge/I–287 Project Office, 660 White Plains Road, Suite 340, Tarrytown, NY 10591 (Telephone: (914) 358–0600). The meetings will be accessible to persons with disabilities. If special needs such as an interpreter or sign language services are needed please contact Michael P. Anderson.

2. Description of the Project Area

The Tappan Zee Bridge/I–287 Corridor (Corridor) is approximately 30 miles in length, extending from the I–87/I–287 Interchange in Suffern, NY to the I–287/I–95 interchange in Port Chester, NY and includes the Tappan Zee Bridge. Maintained by NYSTA, the Corridor encompasses the entire length of the Cross Westchester Expressway (CWE) in Westchester County, connecting two of the most rapidly growing communities in the New York region, Rockland and Orange County with Westchester County, a major employment destination just east of the Hudson River. The Corridor also intersects with the five MTA/MNR commuter rail lines (Port Jervis, Pascack Valley, Hudson, Harlem and New Haven) which run north-south and none of which are oriented east-west through the Corridor or cross the Hudson River. The Corridor is serviced in the east-west direction through the following bus services, the Tappan ZEExpress, Orange Westchester Link (OWL) and other bus services.

3. Purpose and Need

The purpose and need of the project is to address the transportation safety, mobility and capacity needs of the Tappan Zee Bridge/I–287 Corridor. At the conclusion of the scoping process, the EIS will continue to evaluate the multimodal alternatives that meet the purpose and need of the project. Of particular concern is the structural design and integrity of the Tappan Zee Bridge, a vital infrastructure element in the regional and national transportation network. Numerous goals and objectives for proposed improvements have been developed and refined through public and agency coordination since inception of the original NOI in 2002. Primary goals include providing improved transit service within the Corridor including connections to existing transit service, decreasing congestion and travel times within the Corridor, and addressing the structural integrity and traffic safety of the Tappan Zee Bridge. Further refinement or modification to these goals and objectives and the purpose and needs of the project may be made by the joint lead agencies once the scoping update meetings have been conducted and comments received.

When opened to traffic in 1955, the Tappan Zee Bridge carried approximately 18,000 vehicles. Today, the bridge carries approximately 135,000 vehicles daily with volumes as high as 170,000 on some peak days. During the past 20 years, traffic volumes have grown significantly in the Corridor, by over 50 percent on the CWE and by more than 70 percent on the Tappan Zee Bridge. As a result, the Corridor experiences varying levels of traffic congestion throughout the 30-mile length. The steady increase in traffic demand over the years, together with only limited increases in roadway capacity and limited east-west modal alternatives, have resulted in continual increases in travel time and delay. The problems are most severe during the eastbound morning peak and the westbound evening peak periods, particularly within the vicinity of the Tappan Zee Bridge.

The Tappan Zee Bridge has non-standard safety features, narrow lane widths (11 feet 8 inches), no shoulders and a narrow median; operates at or near full capacity in the peak hours; has long periods of stop and go traffic; areas of notable traffic turbulence and an average collision rate four times greater than the average rate (per million vehicle miles), when compared to the whole of the Thruway system. On the highway segment of the corridor, 39 locations on the mainline and various entrance and exit ramps have accident rates in excess of statewide averages.

In addition to its capacity constraints, the structural design and integrity of the bridge requires consideration. While the structural condition is safe to the public, several structural deficiencies also need to be addressed. The bridge is located in a moderate seismically active zone, and was not designed in accordance with the current seismic code. The seismic vulnerability of the bridge is an area of great importance to the project.

Today bus transit, car and van pools operate in mixed traffic and are subject to the same congestion and travel delays. The bridge's current capacity constraints do not allow for dedicated lanes that would accommodate higher capacity vehicles and increased transit bus services. One of the most significant findings in the AA analysis to date is that traffic forecasts clearly demonstrate a demand for travel in the corridor that cannot be accommodated by highway improvements alone. The need to include transit improvements in the corridor is strongly indicated.

As a result of these conditions, the EIS will evaluate alternatives that address the following needs of the Corridor:

- Preserve the existing river crossing as a vital link in the regional and national transportation network
- Provide a river crossing that has structural integrity, meets current design criteria and standards, and accommodates transit
- Improve highway safety, mobility, and capacity throughout the Corridor
- Improve transit mobility and capacity throughout the Corridor and travel connections to the existing north-south and east-west transit network

4. Alternatives

The alternatives under consideration involve different combinations of bridge, highway and transit elements. Transit modes currently undergoing additional evaluation as a result of ongoing analysis include the Bus Rapid Transit (BRT), Light Rail Transit (LRT), and Commuter Rail (CRT). The Alternatives Analysis Report issued in 2006 identified six alternatives for further study in the EIS. These six alternatives were the result of Level 1 and Level 2 alternatives screening and include the following:

- No Build Alternative
- Bridge Rehabilitation with Transportation Demand Management (TDM) and Transportation Systems Management (TSM) measures
- Full Corridor BRT with a new bridge and highway improvements in Rockland County

- Manhattan-bound Full Corridor CRT with a new bridge and highway improvements in Rockland County
- Manhattan-bound CRT with LRT in Westchester County, a new bridge, and highway improvements in Rockland County
- Manhattan-bound CRT with BRT in Westchester County, a new bridge, and highway improvements in Rockland County

The above six alternatives are currently still under evaluation. However, the EIS will include the results of a Level 3 alternatives screening which may result in the elimination, combination or modification of one or more of the alternatives considered to date. The evaluation criteria used to conduct this further screening will be made available for public and agency comment and finalized as part of the scoping process, consistent with the refined and updated purpose and needs, goals, and objectives. If the Level 3 alternatives screening results in the elimination, combination or modification of one or more of the alternatives, this will be disclosed as part of the revised environmental review process and documented in the EIS, affording the opportunity for public and agency review and comment during the DEIS public hearings. Alternatives retained for full evaluation in the EIS will be compared to the baseline conditions of the No Build Alternative in terms of their social, economic, and environmental impacts.

5. Probable Effects

The environmental impact assessment of alternatives will be conducted at various levels of detail throughout the environmental review process. In the initial alternatives screening phases of the project conducted to date, the analysis has focused on major differentiating factors amongst the bridge, highway, and transit elements and alignments. This level of analysis will continue in the Level 3 alternatives screening process and will be documented in a Scoping Update Summary Report to be developed. As alternatives are screened to a reasonable range for detailed study in the DEIS, the analysis will become more detailed and dependent upon additional studies and reports.

Specifically, the DEIS and FEIS will: summarize the results of coordination with federal, state, and local agencies and the public at large; present the appropriate federal, state, and local regulations and policies; inventory and compile previous studies; describe the methodology used to assess impacts; identify the affected environment; predict and analyze the construction-related (short-term) and operational (long-term) impacts (direct, indirect, and cumulative) of reasonable alternatives; and identify opportunities and measures for mitigating significant adverse impacts. Specific scopes for the environmental studies to be used in the Level 3 alternatives screening process and subsequent tiered analysis in the DEIS and FEIS will be established during the public and agency scoping update process.

6. FHWA and FTA Procedures

The EIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the FHWA/FTA Environmental Impact regulations (23 CFR part 771), and the FHWA/FTA Statewide Planning/Metropolitan Planning regulations (23 CFR part 450), as well as the requirements of Section 6002 of SAFETEA–LU. In addition, this EIS will comply with the requirements of the National Historic Preservation Act of 1966, as amended, section 4(f) of the 1966, U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, Executive Order 12898 on Environmental Justice, Executive Order 11990 Protection of Wetlands, and other applicable statutes, rules, and regulations. The EIS and the environmental review process will also satisfy requirements of the New York State Environmental Quality Review Act (SEQRA) (consistent with 6 NYCRR 617.15 and SEQRA regulations, Part 15 Title 17 of NYCRR); this NOI eliminates the need for a positive declaration under that statute.

Regulations implementing NEPA (40 CFR 1500–1508), as well as certain provisions of SAFETEA–LU, call for enhanced agency and public involvement in the EIS process. Several of the pertinent provisions of Section 6002 of SAFETEA–LU that are reflected in the revised approach to the processing of the EIS include: (1) 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''; (2) Provide an opportunity for involvement in helping to develop the purpose and need for the proposed project, as well as the range of alternatives for consideration in the EIS, and analysis methodologies and level of detail in any such analysis; and (3) Establish a plan for coordinating public and agency participation and comment on the environmental review process. As related to item 3, while the project already has a public and agency coordination plan, it was developed pre-SAFETEA–LU and will be amended to reflect specific requirements set forth in Section 6002 of that legislation. An invitation to all Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project will be extended. In the event that an agency or tribe is not invited and would like to participate, please contact the Project Manager listed under Contact Information above. A Coordination Plan will be developed summarizing how the public and agencies will be engaged in the process. This plan will be posted to the project Web site (*www.tzbsite.com*). The public coordination and outreach efforts will include public meetings, open houses, a project Web site, Stakeholder Advisory Work Groups, and public hearings.

Compatible with and contributing to the functionality of the overall project, some elements of the Build Alternatives may be functionally independent of other elements. Although the current plan is to evaluate all of these geographically contiguous elements of the alternatives retained for evaluation in the EIS, as the project elements are developed and as schedules and construction phasing plans develop, it is possible that some of the independent elements may be advanced via separate environmental evaluations under NEPA and SEQRA. In addition, New Starts funding may be pursued for a transit component of the proposed project under 49 U.S.C. 5309. If so, any such transit component identified in the Tier 1 analysis of this would be a separate project subject to additional Tier 2 level NEPA environmental review and New Starts regulations (49 CFR Part 611).

The project sponsors may identify a preferred alternative in the Draft EIS when made available for public and agency comment. Public hearings on the Draft EIS will be held within the study area. On the basis of the Draft EIS and the public and agency comments received, the design of the preferred alternative and other feasible alternatives will be further refined in the Final EIS. The Joint Lead Agencies will identify the preferred alternative in the Final EIS and the Final EIS will serve as the basis for federal environmental findings and determinations needed to conclude the environmental review process related to:

- Tier 1 analysis findings on the transit mode and alignment associated with the preferred alternative.

• Tier 2 analysis findings on the bridge facilities and transit elements from the Tier 1 analysis, approaches and associated highway network improvements within the Corridor associated with the preferred alternative.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Jeffrey Kolb, New York Division Administrator, Federal Highway Administration, Leo W. O'Brien Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, NY 12207.

Brigid Hynes-Cherin, Region II Administrator, Federal Transit Administration, One Bowling Green, Room 429, New York, NY 10004.

Dated: February 6, 2008.

Jeffrey W. Kolb,

New York Division Administrator, Federal Highway Administration.

Brigid Hynes-Cherin,

Region II Administrator, Federal Transit Administration.

[FR Doc. E8–2741 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0016, Notice 1]

NHTSA's Activities Under the United Nations Economic Commission for Europe 1998 Global Agreement: Head Restraints

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments.

SUMMARY: NHTSA is publishing this notice to inform the public that there may be a vote to adopt the Global Technical Regulation (GTR) on Head Restraints at the March 2008 session of the World Forum for Harmonization of Vehicle Regulations (WP.29). In anticipation of this vote, NHTSA is requesting comments on this GTR to inform its decision for the vote. Publication of this information is in accordance with NHTSA's Statement of Policy regarding Agency Policy Goals and Public Participation in the Implementation of the 1998 Global Agreement on Global Technical Regulations.

DATES: Written comments may be submitted to this agency by March 6, 2008.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2008–0016, Notice 1] 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: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.

• Fax: 202–493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

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 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions, or visit the Docket Management Facility at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Ezana Wondimneh, Chief, International Policy and Harmonization (NVS–133), National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Phone: 202–366–2117, Fax: 202–493–2990.

SUPPLEMENTARY INFORMATION: On December 14, 2004, NHTSA published a final rule upgrading Federal Motor Vehicle Safety Standard (FMVSS) No. 202, ''Head Restraints.'' (64 FR 74847) In upgrading the existing FMVSS, NHTSA adopted into the FMVSS many of the requirements which already existed in the head restraint regulation of the United Nations Economic Commission for Europe (UNECE), and which provided improved safety over then existing FMVSS. However, in instances where opportunities existed to achieve increased safety in a cost effective manner or to better enforce our standard, the agency went beyond or took an approach different from that in the UNECE regulation. One important area in which the FMVSS achieved increased safety over the current UNECE regulation was in the addition of a backset requirement (the distance between the head restraint and the back of the head) to reduce whiplash injuries.

In anticipation of these differences between the FMVSS and the UNECE regulation, in its October 8, 2004 notice on the status of NHTSA's participation under the 1998 Agreement (69 FR 60460), NHTSA sought comments on whether the U.S. should sponsor a GTR on head restraints. NHTSA thought that a GTR in this area would not be difficult to achieve given the level of harmonization that already existed between the U.S. and UNECE regulations. In addition, NHTSA believed that much would be gained from such an effort worldwide. The GTR will incorporate the newly adopted backset requirements from the U.S. regulation, thus improving safety in countries that do not have a backset requirement. The GTR will also harmonize any remaining differences between the UNECE regulation and the FMVSS, creating a common regulatory framework and paving the way for future cooperation in the area of rear impact and whiplash injury reduction. No comments were received from the U.S. public objecting to NHTSA's sponsorship and pursuit of this GTR. Many countries participating in the United Nations' process under the 1998 Agreement also welcomed the U.S. leadership. Since whiplash injuries are not unique to the United States, countries around the world had strong incentive to cooperate in order to address the social and economic impacts of these injuries.

During the November 2004 meeting of WP.29, NHTSA gained the approval of the Executive Committee of the 1998 Global Agreement (AC.3) to begin the development of a Head Restraints GTR. The proposal was referred to the Working Party on Passive Safety (GRSP). In February 2005, the GRSP formed an informal working group, chaired by the United States, to develop the GTR.

In developing and drafting the new GTR, the working group combined elements from UNECE Regulations Nos. 17 and 25, and the newly upgraded FMVSS No. 202. The group also

reviewed new research which led to the inclusion of requirements not contained in the previously mentioned regulations and discussed areas of further research which could be addressed in a second phase to this GTR. In an October 10, 2006 (71 FR 59582) notice, NHTSA described the interim progress on the head restraint GTR and sought comments. NHTSA did not receive comments. The informal working group has completed drafting the GTR, and at the December 2007 session of GRSP the GTR was recommended to WP.29/AC.3 for a vote at its March 2008 Session.

The U.S. successfully argued for the inclusion of a backset requirement in the GTR. The backset requirement and measurement procedure in the GTR are as specified in FMVSS No. 202. The Group of Experts studied and evaluated the extent to which the choice of reference point has an impact on the level of stringency. The two reference points in question are H-point, which is the actual hip point of the dummy sitting in the seat, and the R-point, which is the theoretical hip point of the dummy that manufacturers use when designing a vehicle. The R-point is the same as the seating reference point (SgRP) when the seat is set in the rearmost seating position. Both have been used in U.S. regulations. Currently, the FMVSS No. 202 relies on the H-point, while the UNECE regulation relies on the R-point. The group of experts found that for the backset measurement, the choice of reference point does have an impact on stringency. To that end, they sought to determine an equivalent limit between the two reference points. The group found that requirements with the R-point should be 45 mm to provide equivalent stringency as the 55 mm requirement when using the H-point. The GTR provides the flexibility for contracting parties to decide on the reference point provided that they make the necessary adjustments to the requirements to make them equivalent. Contracting parties choosing the H-point requirement will use the 55 mm backset requirement while those opting for R-point will use the 45 mm requirement. Since H-point and the 55 mm backset requirement have been established in the U.S. regulation and it is the preferred option in the GTR, NHTSA will continue to require it. However, with respect to all other measurements, the group of experts found that the reference point should not impact stringency and therefore, it was agreed that the R-point should be specified in the GTR. Providing that cost-benefit analysis confirms that there will be no impact on benefits in the U.S., the U.S. will propose using R-point in its compliance testing for all measurements other than backset.

The agency believes that this GTR will improve the current U.S. regulation and provide significant benefits in other countries which adopt this GTR, due to the backset requirement. This GTR also harmonizes all existing international regulations on head restraints, creating a common regulatory base to which further harmonized improvements could be added. The European Union and Japan have been conducting extensive research in the area of rear impact, particularly as it pertains to more biofidelic anthropomorphic dummies. WP.29 has already approved the concept of a Phase 2 for head restraints to consider this research. Working from common regulatory requirements, the U.S. believes there will be the possibility of preventing more whiplash injuries in the future, looking at the seat and the head restraint as a system.

The GTR is expected to be voted on at the March 2008 session of WP.29 and AC.3. In anticipation of this vote, NHTSA is again requesting comments on this GTR. Once the GTR is established through consensus voting at WP.29, NHTSA will initiate domestic rulemaking to amend its existing FMVSS to incorporate approved provisions of the GTR. This will allow for further opportunity to consider comments from interested parties through the usual rulemaking process. If NHTSA's rulemaking process leads it to either not adopt or to modify aspects of the GTR, the agency will seek to amend the GTR in accordance with established procedures under the 1998 Global Agreement and WP.29, as it recently did with the door lock GTR.

Issued on: February 5, 2008.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E8–2521 Filed 2–13–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35118]

Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Sacramento Valley Railroad, Inc.

Patriot Rail, LLC (PRL) and its subsidiaries, Patriot Rail Holdings LLC (PRH), and Patriot Rail Corp. (PRC) (collectively, Patriot), all noncarriers, jointly have filed a verified notice of exemption to continue in control of Sacramento Valley Railroad, Inc. (SAVR), upon SAVR's becoming a Class III rail carrier.[1]

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 35117, *Sacramento Valley Railroad, Inc.—Operation Exemption—McClellan Business Park LLC.* In that proceeding, SAVR seeks an exemption under 49 CFR 1150.31 to operate 7 miles of unmarked rail line owned by McClellan Business Park LLC, in Sacramento County, CA.

The transaction is scheduled to be consummated on or after March 1, 2008, and hence after the February 28, 2008 effective date of the exemption.

Patriot currently controls three other Class III rail carriers: Tennessee Southern Railroad Company, Rarus Railroad Company, and Utah Central Railway Company.

Patriot states that: (1) The rail lines to be operated by SAVR do not connect with any other railroads in the Patriot corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect these rail lines with any other railroad in the Patriot corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 21, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35118, must be filed with the Surface Transportation Board, 395 E

[1] PRL owns 51% of the equity interests in PRH. PRH owns 100% of the stock of PRC. By letter filed on February 6, 2008, Patriot clarifies that SAVR is directly controlled by PRC.

Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: February 7, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–2773 Filed 2–13–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35117]

Sacramento Valley Railroad, Inc.—Operation Exemption—McClellan Business Park LLC

Sacramento Valley Railroad, Inc. (SAVR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate, pursuant to an agreement that will be completed by March 1, 2008, with McClellan Business Park LLC (MBP), over MBP's approximately 7-mile line of unmarked railroad within McClellan Business Park, in McClellan, Sacramento County, CA.

SAVR advises that MBP's predecessor entered into a license and operating agreement with the Yolo Shortline Railroad Company (Yolo) on February 6, 2001.[1] Sierra Railroad Company acquired control of Yolo[2] and began operating the line.[3] MBP notified Yolo's successor that the license to operate would not be renewed and put the operation of the line out for bid. SAVR was the winning bidder.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 35118, *Patriot Rail, LLC, Patriot Rail Holdings LLC, and Patriot Rail Corp.—Continuance in Control Exemption—Sacramento Valley Railroad, Inc.* In that proceeding, Patriot Rail, LLC and its subsidiaries, Patriot Rail Holdings LLC and Patriot Rail Corp., jointly have filed a verified notice of exemption to continue in control of SAVR, upon SAVR's becoming a rail carrier.

The transaction is scheduled to be consummated on or after March 1, 2008, and hence after the February 28, 2008 effective date of the exemption.

SAVR certifies that its projected annual revenues as a result of this transaction would not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues will not exceed $5 million.

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than February 21, 2008 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35117, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., 600 Baltimore Ave., Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 7, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8–2770 Filed 2–13–08; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Yolo Shortline Railroad Company—Acquisition and Operation Exemption—County of Sacramento, CA,* STB Finance Docket No. 34018 (STB served Mar. 27, 2001).

[2] *See Sierra Railroad Company—Acquisition of Control Exemption—Yolo Shortline Railroad Company,* STB Finance Docket No. 34351 (STB served June 11, 2003).

[3] *See Sierra Railroad Company—Corporate Family Transaction Exemption—Yolo Shortline Railroad Company,* STB Finance Docket No. 34360 (STB served June 23, 2003).

Federal Register

Thursday,
February 14, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for *Astragalus magdalenae* var. *peirsonii* (Peirson's Milk-Vetch); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0019; 92210–117–0000–B4]

RIN 1018–AU98

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for Astragalus magdalenae var. peirsonii (Peirson's Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating final revised critical habitat for *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 12,105 acres (ac) (4,899 hectares (ha)) fall within the boundaries of the revised critical habitat designation for *A. m.* var. *peirsonii.* The revised critical habitat is located in Imperial County, California. We are excluding Unit 2 from this revised designation based on the disproportionate economic and social impacts associated with the designation of this unit relative to the other units designated as critical habitat. This final revised designation constitutes a reduction of 9,758 ac (3,949 ha) from our 21,863 ac (8,848 ha) previous final designation of critical habitat for *A. m.* var. *peirsonii* published in 2004.

DATES: This rule becomes effective on March 17, 2008.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* In addition, the final revised rule, economic analysis, and maps are available at *http://www.fws.gov/carlsbad/.* Supporting documentation we used in preparing this final rule, will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760–431–9440; facsimile 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

This final rule addresses revised critical habitat for *Astragalus magdalenae* var. *peirsonii.* For additional information on the taxonomy, biology, and ecology of this taxon, refer to the final rule listing the taxon as threatened, published in the **Federal Register** on October 6, 1998 (63 FR 53596), the proposed and final rules designating critical habitat for this taxon published in the **Federal Register** on August 5, 2003 (68 FR 46143) and on August 4, 2004 (69 FR 47330), respectively, and the proposed rule to revise critical habitat published in the **Federal Register** on July 27, 2007 (72 FR 41258). It is our intention to discuss only those topics directly relevant to the revised designation of critical habitat in this final revised rule.

Astragalus magdalenae var. *peirsonii* is an erect to spreading, herbaceous member of the Fabaceae (legume family) (Barneby 1959, p. 879; 1964, p. 862) that occurs on bowls, swales, and slopes of intact, active windblown sand dunes of the Algodones Dunes of Imperial County, California and the northeastern Estado de Baja California and Gran Desierto of northwestern Sonora, Mexico (Felger 2000, p. 300; Spellenberg 1993, p. 598; Willoughby 2005a, p. 2). Please refer to the ''Primary Constituent Elements'' section below for additional discussion on habitat requirements of this taxon. Plants may reach 8 to 27 inches (in) (20 to 70 centimeters (cm)) in height and develop tap roots (Barneby 1964, pp. 863–864) that penetrate deeply to the moister sand and that anchor plants in the shifting sand dunes. The root crown is often exposed by wind action moving the sand away from the base of the plants. Seeds are enclosed in fruits or pods and are either dispersed locally by falling out of partly opened fruits on the parent plant, ''salt-shaker'' style, or are dispersed further if blown across the sand after falling from the parent plant. Thus seeds can be transported from one favorable site to another, or remain near the parent plant, depending on winds (Phillips *et al.* 2001, p. 11).

Seeds require no pre-treatment to induce germination, but germination success has been shown to improve dramatically when the outer seed coat is scarified (e.g., scratched, chipped) (Porter *et al.* 2005, p. 29). Germination appears to be more successful in the cooler months of the year when temperatures are less than 86 °F (30 °C) (Romspert and Burk 1979, pp. 45–46). Therefore, based on our current understanding of the taxon's life history, sufficient rain in conjunction with cool temperatures and wetter-than-average fall weather appears to trigger germination events.

Depending upon conditions, *Astragalus magdalenae* var. *peirsonii* is capable of flowering before it is one year old (Barneby 1964, p. 862; Romspert and Burk 1979, p. 16; Phillips *et al.* 2001, p. 10; Phillips and Kennedy 2005, p. 22). Porter *et al.* (2005, pp. 31–32) hypothesized that if rains occur early in the growing season, then flowering can begin in as little as 3 months after germination. If, on the other hand, rains (and germination) do not occur until late February, then flowering is delayed until the next rainy season. In dry years, individuals die and are not replaced by new seedlings.

This variability in annual abundance of above-ground plants has caused this taxon to be considered variously as an annual (completing its life cycle in a year or growing season) or a perennial (living for more than 2 years) (Munz 1932, p. 7; Munz 1974, p. 432; Barneby 1959, p. 879; Barneby 1964, p. 862; Spellenberg 1993, p. 598; Willoughby 2001, p. 21). Recent evidence has confirmed that this species is a short-lived perennial (Phillips *et al.* 2001, p. 10; Porter *et al.* 2005, pp. 31, 34). This taxon likely depends on the production of seeds in wetter years and the persistence of the seed bank from previous years to survive until appropriate conditions for germination occur again. Porter *et al.* (2005, p. 29) identified the primary dormancy mechanism in *Astragalus magdalenae* var. *peirsonii* as the impermeability of the seed coat to water and demonstrated little loss of viability in seeds stored for 5 years. This dormancy mechanism is consistent with species having a seed bank (Given 1994, p. 67). Dispersed seeds in a given year that do not germinate during the subsequent growing season become part of the soil seed bank (Given 1994, p. 67).

Species Distribution and Abundance

In the United States, *Astragalus magdalenae* var. *peirsonii* is restricted to about 53,000 ac (21,500 ha) in a narrow band running 40 miles (mi) (64 kilometers (km)) northwest to southeast along the western portion of the Algodones Dunes of eastern Imperial County, California, which is the largest sand dune field in North America. *Astragalus magdalenae* var. *peirsonii* has also been documented from the Gran Desierto of Sonora, Mexico (Felger 2000, p. 300) from an area south and southeast of the Sierra Pinacate lava

field, but the Service has no additional information on the size of the population or extent of area occupied (63 FR 53599). The taxon was noted from the Borrego Valley, California, by Barneby (1959, p. 879) but no verified, reproducing population exists (Porter *et al.* 2005, pp. 9–10). Other observations from Yuma, Arizona, and San Felipe, Baja California, Mexico, were based on misidentified specimens (see Porter *et al.* 2005, pp. 9–10, and Phillips *et al.* 2001, p. 7, for detailed accounts).

The Algodones Dunes (Dunes) are one of the largest sand dune fields in North America, extending about 40 mi (64 km), trending from northwest to southeast (Norris and Norris 1961, p. 608). Please refer to the 2003 proposed critical habitat rule for a more detailed discussion on the geomorphology of the Dunes (68 FR 46143). These dunes are often referred to as the Imperial Sand Dunes, a designation derived from their inclusion in the Imperial Sand Dunes Recreation Area (ISDRA) established by the Bureau of Land Management (BLM). The majority of the Dunes is managed by BLM within 8 management areas, of which 7 are occupied by *Astragalus magdalenae* var. *peirsonii* (Mammoth Wash, North Algodones Wilderness, Glamis, Gecko, Adaptive Management Area (AMA), Ogilby, and Buttercup). The State of California and private individuals own some small inholdings in the Mammoth Wash management area.

The ISDRA is the most popular off-highway vehicle (OHV) area in the southwest United States, with a specified major focus to ensure that OHV recreation opportunities are continuously available while responding to increased need for protection of plant and animal species in the Dunes (BLM 2003, pp. 1–3). As a result of a settlement agreement reached in 2000, the BLM agreed to establish 5 interim closure areas within the Dunes, temporarily closing these areas to OHV recreation (see Index Map in ''Rule Promulgation'' section). These temporary closures are currently still in place.

The Dunes are in one of the driest and hottest regions in the United States. The rainfall is often described as scattered or patchy with amounts differing from place to place and from year to year, with areas to the northwest being generally dryer than those to the southeast (Willoughby 2001, p. 20). Romspert and Burk (1979, p. 11) reported average yearly rainfall during the period 1941–1970 was 2.6 in (66 millimeters (mm)). Average yearly rainfall between 1997 and 2002 at seven weather stations in the vicinity of the Dunes ranged from a low of 0.1 in (3.3 mm) during the 2001–2002 growing season to a high of 6.1 in (155 mm) in the 1997–1998 growing season (Willoughby 2004, p.13). Average yearly rainfall between 2002 and 2006 at two weather stations on the Dunes ranged from a low of 0.2 in (5.3 mm) during the 2005–2006 growing season to a high of 4.8 in (122 mm) during the 2004–2005 growing season (Willoughby 2006, p.18).

The distribution and abundance of *Astragalus magdalenae* var. *peirsonii* has been recorded during several ongoing survey efforts. As discussed in the 2004 final critical habitat rule (69 FR 47330), the 1977 dunes-wide survey for *A. m.* var. *peirsonii* and four other rare psammophytic (sand-loving) scrub species (WESTEC 1977) was considered the most extensive survey of the Dunes conducted at that time. The BLM conducted rare plant surveys for 5 consecutive years from 1998 through 2002, generally repeating the methodology used by WESTEC in its 1977 survey (Willoughby 2001, p. iii). Raw data from the 2001 and 2002 surveys were provided by the BLM to the Service for use in the development of the 2004 final critical habitat rule. However, a written report of the 2001 and 2002 surveys (Willoughby 2004) was completed in October 2004, after the publication of the August 4, 2004, final critical habitat rule. As also discussed in the 2004 final critical habitat rule, Phillips and Kennedy (2002, 2003) conducted surveys for *A. m.* var. *peirsonii* from 2001 through 2003. Since publication of the 2004 final critical habitat rule, both the BLM (Willoughby 2005a, 2005b, 2006) and Phillips and Kennedy (2004, 2005, 2006) continued to conduct annual surveys for this species through 2006. Table 1 below summarizes all of the various survey efforts, including the number of sampling points or transects and the effective area surveyed by each effort as well as the estimated population by the survey methodology and the actual number of plants counted.

TABLE 1.—COMPARISON OF SURVEY DATA COLLECTED FOR ASTRAGALUS MAGDALENAE VAR. PEIRSONII IN THE DUNES; DATA TAKEN FROM 13 UNPUBLISHED REPORTS

Year	Surveyor	Number of plants counted	Estimated population	Number of samples	Effective area *ac)
1977	WESTEC	N/A	N/A	1,611	53,000
1998	BLM [1]	5,064	N/A	542	53,000
1999	BLM [1]	942	N/A	542	53,000
2000	BLM [1]	86	N/A	542	53,000
2001	BLM [1]	5,930	N/A	542	53,000
2002	BLM [1]	2,297	N/A	542	53,000
2001	Phillips [2]	[3] 71,926	N/A	127	~ 35,000
2001	Phillips [2]	30,771	N/A	25	138
2003	Phillips [2]	33,202	N/A	25	138
2005	Phillips [2]	77,922	[4] 173,328	25	138
2006	Phillips [2]	1,233	[4] 2,035	25	138
2004	BLM [1]	25,798	286,374	37,169	53,000
2005	BLM [1]	739,805	1,831,076	123,488	53,000
2006	BLM [1]	761	83,451	775	53,000

[1] BLM reports cited as Willoughby.
[2] Phillips reports cited as Phillips et al. or Phillips and Kennedy.
[3] Reconnaissance of unspecified area.
[4] Estimated population for 60 specific sample sites.

Since different methodologies and survey effort were used by the BLM as compared to Phillips and Kennedy, it is difficult to compare the annual estimates of dunes-wide species abundance reported from the two

different survey efforts. Early surveys conducted by WESTEC in 1977 (WESTEC 1977) and by BLM from 1998 through 2002 (Willoughby 2001, 2004) incorporated a methodology [whereby plants encountered along transects were qualitatively indexed to an abundance value] and represented in quadrants measuring 0.45 mi (0.72 km) on each side. Analysis of these coarse, dune-wide surveys could only provide relative comparisons of mean abundance values between years. In 2004, the BLM embarked on a new sampling methodology that sampled a larger portion of the Dunes in greater detail (Willoughby 2005a, pp. 1–5). Unlike previous surveys, the recent BLM surveys were scientifically and statistically designed to estimate the standing *Astragalus magdalenae* var. *peirsonii* population (Willoughby 2005a, 2005b, 2006). Data were compiled in adjacent 82 foot x 82 foot (ft) (25 meters x 25 meters (m)) cells along 2.5–3.1 mi (4–5 km) transects covering the full length of the Dunes, and all micro-habitats were sampled along each transect (Willoughby 2005b, pp. 1–3). Within these 82 ft x 82 ft (25 m x 25 m) cells, surveyors noted: The total number of plants; age class of plants; number of seedlings; number of flowering versus non-flowering plants; number of plants exhibiting damage from OHVs; and the number of plants showing damage from other sources (Willoughby 2005b, p. 3). The recent BLM surveys also increased the number of sample transects to 135 in 2004, and to 510 for the spring 2005 surveys (Willoughby 2005b). In 2006, the BLM used a randomized sample of 2005 known occupied cells during the very dry winter and spring of 2006 to yield a population estimate for the 2005–2006 survey year (Willoughby 2006, p. 6). Both the WESTEC and BLM surveys effectively covered the entire Dunes and thus encompassed all management areas containing *Astragalus magdalenae* var. *peirsonii* (Willoughby 2005a, p. 2).

By comparison, Phillips *et al.* (2001, p. 6) counted individual *Astragalus magdalenae* var. *peirsonii* from 127 specific locations covering an unspecified area of about 35,000 ac (14,165 ha) (Phillips and Kennedy 2002, Appendix A). Phillips and Kennedy (2002, 2003, 2004, 2005, 2006) then established 25 monitoring sites from these 127 locations for their multi-year survey effort, which had an effective area of about 138 ac (56 ha).

The disparity between these three survey methods and the data collected makes it difficult to assess status and trends of the *Astragalus magdalenae* var. *peirsonii* population. However, we consider the surveys conducted by BLM to be the most extensive and precise effort to determine overall population abundance and distribution for this species because this effort effectively covered the entire Dunes and thus encompassed all management areas containing *Astragalus magdalenae* var. *peirsonii, and because* the amount of data gathered in 2005 was the result of an exceptionally good rainfall year and extraordinary monitoring effort. We agree with the BLM that the 2005 survey effort represents the best estimate to date of distribution and abundance of the species on the Dunes (Willoughby 2006, p. v). The 2005–2006 survey year was an exceptionally dry year, with no *A. m.* var. *peirsonii* germination reported (Willoughby 2006, p. vi).

While direct comparison of annual estimates of *Astragalus magdalenae* var. *peirsonii* abundance reported by BLM and Phillips and Kennedy is difficult due to differences in survey methodologies and effort used by the surveyors, some comparisons can be made which illustrate the wide variation in numbers of standing individuals found in any given year and in any given area of the Dunes depending on abundance and distribution of rainfall. If we compare BLM data from 1998 with BLM 2000 data, and compare Phillips and Kennedy's 2001 data with their 2003 data, we see the annual variation in species abundance at occupied sites. Along the same series of west to east transects, BLM counted a total of 5,064 plants in 1998, a heavy rainfall year, and 86 plants in 2000, a low rainfall year (Willoughby 2004, p. 36). The record of steep decline of the cohort counted by Phillips *et al.* in 2001 was tracked by Phillips and Kennedy (2002, p. 18), who reported that only 26 percent of the plants seen in spring of 2001 were present in late 2001. Phillips and Kennedy (2003, p. 12) also reported that only 0.26 percent of the plants counted in spring 2001 survived to spring 2003.

This wide variation in numbers of standing individuals is also evident when comparing results of the BLM's dunes-wide surveys conducted in 2004, 2005, and 2006. In 2004, estimated dunes-wide abundance was 286,374 plants (5.5 plants/ac (13.5/ha)) (Willoughby 2005a, p. 37). In 2005, estimated dunes-wide abundance was 1,831,076 plants (39.8 plants/ac (86/ha)) (Willoughby 2005b, pp. 9–11). In 2006, estimated dunes-wide abundance was 83,451 plants (1.6 plants/ac (3.9/ha)) (Willoughby 2006, p. vi). Differences in densities (plants per acre) are likely due to differences in rainfall between years. An above average amount of rainfall was recorded during the 2004–2005 growing season, resulting in the greatest abundance of plants to date, while the 2005–2006 growing season was considered an exceptionally dry year, resulting in zero reported germination. Density in 2004 may have also been decreased due to higher average monthly maximum temperatures recorded during the survey period, potentially impacting germination (Willoughby 2005a, p. 12).

In any given year, *Astragalus magdalenae* var. *peirsonii* may be present as standing plants, as a ''soil seed bank'' in the sand dunes, or as plants persisting as perennial root crowns in the sand dunes. During any given year, the suitable habitat for *A. m.* var. *peirsonii* may be occupied by various combinations of these three life history phases. The dynamics of dune morphology, local rainfall patterns and amounts, and the spatial distribution of the soil seed bank contribute to the patchy or mosaic nature of the distribution of standing plants of *A. m.* var. *peirsonii*. As discussed above, local rainfall patterns and amounts are likely to cause shifts in the proportions of these three life history phases.

This species was federally listed as threatened due to threats of increasing habitat loss from OHV use and associated recreational development, destruction of plants, and lack of protection afforded the plant under State law (63 FR 53596). Impacts to individual plants and their habitat associated with OHV activities and recreation development continue to be the primary threat to this species in the United States. Please refer to the final listing rule (63 FR 53596) for a detailed discussion of the threats to the species and to the ''Special Management Considerations or Protection'' section of this final revised rule for a more detailed discussion on threats to this species' habitat.

Previous Federal Actions

On August 4, 2004, we published a final rule designating approximately 21,863 ac (8,848 ha) of critical habitat for *Astragalus magdalenae* var. *peirsonii* in Imperial County, California (69 FR 47330). Following publication of the final rule, a lawsuit was filed against the BLM and the Service alleging, among other violations related to protection of *A. m.* var. *peirsonii* and desert tortoise (*Gopherus agassizii*), that the Service did not properly consider and weigh the benefits and costs associated with designating critical habitat for *A. m.* var. *peirsonii*. The lawsuit was filed by the Center for Biological Diversity, Sierra

Club, Public Employees for Environmental Responsibility, and Desert Survivors (*Center for Biological Diversity et al.*, Plaintiffs v. *Bureau of Land Management et al.*, Defendants, and *American Sand Association, et al.*, Defendant Intervenors, case 3:03–cv–02509). In a September 25, 2006, order and injunction regarding final relief, the court ordered the Service to submit for publication a new final critical habitat rule to the **Federal Register** no later than February 1, 2008. In addition, the Court ordered that the August 4, 2004, final critical habitat designation remain in full regulatory force and effect pending completion of the new final critical habitat rule for *A. m.* var. *peirsonii*. When effective, this final revised rule replaces the August 4, 2004, final critical habitat designation.

On July 27, 2007 (72 FR 41258), we published a notice in the **Federal Register** announcing: (1) The availability of the proposed rule to designate approximately 16,108 ac (6,519 ha) of land within Imperial County, California, as revised critical habitat for *Astragalus magdalenae* var. *peirsonii*; (2) the availability of the draft economic analysis (DEA) of the proposed rule to revise critical habitat for public review; and (3) the scheduling of public hearings on the proposed critical habitat designation and DEA. Public hearings were conducted on August 23, 2007, in Carlsbad, California. The public comment period closed on September 25, 2007.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed rule to revise critical habitat for *Astragalus magdalenae* var. *peirsonii* and the associated DEA published on July 27, 2007 (72 FR 41258). During the comment period, we requested all interested parties to submit comments or information related to the proposed revision to the critical habitat designation, including, but not limited to, the following: Unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the proposed designation, benefits associated with critical habitat designation, areas considered but not proposed for designation and the associated rationale for the non-inclusion or exclusion of these areas, and methods used to designate critical habitat.

We also contacted appropriate Federal and State agencies, County governments, elected officials, and other interested parties through telephone calls, letters, and news releases sent by facsimile, U.S. mail, or electronic mail, and invited them to comment on the proposed revised rule and the associated DEA. We also invited public comment through the publication of a notice in the San Diego Union-Tribune. In addition, we held two public hearings on August 23, 2007, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California. Transcripts of these hearings are available for inspection (see **ADDRESSES**).

During the comment period that opened on July 27, 2007, and closed on September 25, 2007, we received 61 comments directly addressing the proposed revised critical habitat designation and the DEA: 3 from peer reviewers, 1 from a Federal agency (BLM), and 57 from organizations or individuals. We received no comments from State or local agencies.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from three of the peer reviewers. The peer reviewers were generally supportive of the designation of critical habitat. Most, however, recommended adjusting the proposed critical habitat boundaries and altering management strategies to provide for better coexistence of OHV recreation and *Astragalus magdalenae* var. *peirsonii* survival and recovery.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Astragalus magdalenae* var. *peirsonii*. All comments received were grouped into general issue categories relating to the proposed rule to revise critical habitat for *A. m.* var. *peirsonii* and are addressed in the following summary and incorporated into this final revised rule as appropriate.

Peer Reviewer Comments

Comment 1: One peer reviewer suggested the entire Dunes system should be designated critical habitat since *Astragalus magdalenae* var. *peirsonii* grows throughout the dune system.

Our Response: The Act defines critical habitat as the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species. We believe that our proposed and final designations accurately describe all areas meeting the definition of critical habitat for *Astragalus magdalenae* var. *peirsonii*. Application of the of the criteria described below (see ''Criteria Used to Identify Critical Habitat'' section of the proposed rule and this final rule) captures areas supporting the physical and biological features that are essential to the conservation of the species, identified as the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement essential for the conservation of the species. Thus, not all areas supporting the identified PCEs will meet the definition of critical habitat. We did not designate the entire dune system as critical habitat because we do not believe that the entire dune system meets the definition of critical habitat for *Astragalus magdalenae* var. *peirsonii*. Areas outside the proposed critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act.

Comment 2: According to one peer reviewer, the most populous site in the Dunes in terms of number of plants found during a 2004–05 survey was along the International Boundary in the southern portion of Subunit 4 (Phillips and Kennedy 2005). The third and fourth most populous sites were also in this subunit. Because these sites have been systematically excluded from BLM surveys, the commenter recommended that a Geographic Information System (GIS) specialist should determine if these three sites are included in the proposed critical habitat, and if not, adjust the boundaries to include them.

Our Response: After reviewing the GIS data, we have determined that the survey sites referenced by Phillips and Kennedy 2005 are within the boundaries of the critical habitat designation.

Comment 3: One reviewer questioned the necessity of including 92 percent of the *Astragalus magdalenae* var. *peirsonii* populations within the critical habitat designation to maintain species viability. The reviewer further suggested that using a lower percentage of

captured populations may allow for more intervening areas between designated areas of critical habitat, where pass-through routes for OHVs could be placed.

Our Response: Including 92 percent of the *Astragalus magdalenae* var. *peirsonii* population observed in 2005 was not one of the criteria of the proposed critical habitat designation; rather, it was a result of applying the methodology outlined in the proposed rule. OHV usage patterns were not taken into consideration when proposing revisions to critical habitat for *A. m.* var. *peirsonii*. The most appropriate locations for OHV pass-through routes may be determined by the BLM as part of their management plan.

Comment 4: One reviewer expressed concern that designating all of Subunit 3A and the northern portion of Subunit 3B as critical habitat could result in greater impacts to *Astragalus magdalenae* var. *peirsonii* than are now taking place. The reviewer stated that those areas received little relative OHV use from 1998 through 2001 (Willoughby 2001), and predicted the formation of ''sand highways,'' as currently observed around existing closure stakes, which may increase disturbance if critical habitat designation results in closures to OHV use in those areas.

Our Response: We will work with the BLM to avoid or minimize these potential impacts during future section 7 consultations, as appropriate, and recommend the BLM take these potential impacts into consideration when developing their management plans.

Comment 5: One peer reviewer stated that according to McGrann et al. (2005), moderate to high levels of OHV use can significantly decrease the abundance of *Astragalus magdalenae* var. *peirsonii* seedlings, while low levels of OHV use does not significantly affect *A. m.* var. *peirsonii*. The reviewer suggested that the entire dune system could be opened to OHV use if a management scheme were put in place reducing the number of OHV recreationists using the Dunes to low levels that would not significantly affect *A. m.* var. *peirsonii*.

Our Response: On Federal land, it is the responsibility of the appropriate land management agency to develop and implement resource management plans. Comments and suggestions regarding resource management in the Dunes should be directed to the BLM. As part of developing and implementing a recovery strategy for a listed species, we do consider site-specific management strategies important to the conservation of the species and we also work with land owners, managers, researchers, and others to develop and implement them, as appropriate, as part of the recovery process.

Comment 6: One peer reviewer stated that reproductive success of *Astragalus magdalenae* var. *peirsonii* is not dependent upon the presence of flowering plants between bowls (hollows among the dunes), and that no basis was presented in the proposed rule for the assumption that areas between bowls are important for maintaining gene flow within the population. According to this reviewer, the growing season of 2004 to 2005 was the first season since 2000 that showed plants growing in any quantity on ridges and other features between the bowls that constitute the main habitat of *A. m.* var. *peirsonii*. The reviewer was concerned whether pass-through routes for OHVs could be designated within critical habitat in areas that are normally unoccupied without impeding gene flow.

Our Response: The most appropriate locations for OHV pass-through routes through designated critical habitat may be determined by the BLM as part of their management plan if deemed necessary. We do not concur with the reviewer's suggestion that because areas between bowls are not consistently occupied by *Astragalus magdalenae* var. *peirsonii* plants, they may be less important for maintaining gene flow within the population. Gene flow is influenced by the movement of pollinators and the wind dispersal of fruit and seeds. It is not necessary that *Astragalus magdalenae* var. *peirsonii* plants be present in an area for that area to be important to gene flow.

Comment 7: One peer reviewer suggested consideration should be given to associated habitat and taxa necessary for the accumulation of nitrogen-containing compounds when designating critical habitat for *Astragalus magdalenae* var. *peirsonii*. The presence of detritivores such as termites, herbivores, and woody debris, such as that from *Croton wigginsii* and *Eriogonum deserticola*, should be present in sufficient quantities to allow for the continued support of this species in areas that have been designated critical habitat when sufficient rainfall is available.

Our Response: The psammophytic scrub plant community that supports detritivores and other biota, of which *Astragalus magdalenae* var. *peirsonii* is a component, is included as a PCE in the rule. The need to preserve this community was considered in our analysis. While we did not specifically analyze the role detritivores play in providing mineral resources to *A. m.* var. *peirsonii*, we believe that the associated psammophytic scrub plant community within designated critical habitat should support detritivores in sufficient quantities to provide the necessary mineral resources for *A. m.* var. *peirsonii*.

Comment 8: One peer reviewer pointed out that given the constant shifting of the Dunes, the Dunes are relatively non-static; therefore, critical habitat designated in 2007 may not be as viable in 2015 because the depth of available *Astragalus magdalenae* var. *peirsonii* seed and the aspect of bowls may change over time. The reviewer suggested that we allow for the dynamic nature of the dune landscape by designating critical habitat units that are ''oriented slightly NW to SE from proposed positions'' in some instances.

Our Response: Astragalus magdalenae var. *peirsonii* is adapted to the non-static nature of the Dunes. If the aspect of bowls changes over time without changing geographic position, they likely would remain within critical habitat. Critical habitat can also be revised if new information indicates changes in the distribution of essential features have occurred (this current rule is such a revision).

Comment 9: One peer reviewer commented that Phillips and Kennedy (2005) documented plants germinating and flowering in the first growing season twice over the past seven years. The reviewer suggested we cite this data-based conclusion rather than the Porter *et al.* (2005) hypothesis on page 41259 of the proposed rule (72 FR 41258: July 27, 2007).

Our Response: Phillips and Kennedy (2005) were cited in the proposed critical habitat (see 72 FR 41259, third column, second full paragraph, first sentence). We believe that both citations are relevant.

Comment 10: One reviewer noted that reference to the existence of a seed bank for *Astragalus magdalenae* var. *peirsonii* is made on numerous occasions in the proposed rule, but Phillips and Kennedy's (2002, 2006) two reports detailing studies of the seed bank are not cited. The reviewer suggested that these reports either be acknowledged, or a reason presented for their exclusion.

Our Response: Although the two studies in question do provide valuable information regarding the seed bank of *Astragalus magdalenae* var. *peirsonii*, we determined that it was not appropriate to cite either study in relation to the specific statements referenced in the rule.

Comment 11: One reviewer recommended that the Service form an

advisory committee comprised of representatives from affected agencies and advocacy groups with the goal of developing a critical habitat designation.

Our Response: Through our rulemaking process, we have solicited input from affected agencies and advocacy groups via our request for comments on the proposed critical habitat designation and during the public hearings. All comments received have been considered and incorporated into the final critical habitat rule as appropriate. Therefore, we believe we have appropriately sought and considered the opinions of all interested parties during the promulgation of this revised rule.

Comment 12: All three peer reviewers offered recommendations intended to improve management of the Dunes to allow coexistence of *Astragalus magdalenae* var. *peirsonii* and OHV use in coordination with the critical habitat designation, or to alter the proposed critical habitat designation based on dune management considerations.

Our Response: On Federal land, it is the responsibility of the appropriate land management agency to develop and implement resource management plans. Comments and suggestions regarding resource management in the Dunes should be directed to the BLM. As part of developing and implementing a recovery strategy for a listed species, we do consider site-specific management strategies important to the conservation of the species and work with landowners, managers, researchers, and others to develop and implement such strategies, as appropriate, as part of the recovery process.

Public Comments

Comment 13: A number of commenters asserted that scientific evidence supports the hypothesis that OHV activity does not harm *Astragalus magdalenae* var. *peirsonii* populations. Some commenters cited personal observations that the habitat has changed little during their history of visitation and that OHV users deliberately avoid *A. m.* var. *peirsonii* because of damage to tires.

Our Response: The commenters did not provide any additional scientific information or data to support the hypothesis that OHV activity does not harm *Astragalus magdalenae* var. *peirsonii* populations. The best scientific information suggests that OHV use can damage *A. m.* var. *peirsonii* habitat (Groom *et al.* 2007). Groom *et al.* (2007, p.132) demonstrated that OHV impact reduced the survival of small *A. m.* var. *peirsonii* individuals by 33 percent over a 3 month period. Further, this study indicated that within the Dunes, areas open to OHV use supported 4 to 5 times fewer plants than areas closed to OHV use (Groom *et al.* 2007, p. 130). However, in the relatively short time frame that *A. m.* var. *peirsonii* has been monitored, populations of the plant appear to persist in areas of OHV use, perhaps because OHV users tend to avoid *A. m.* var. *peirsonii* as asserted by the commenter. Further monitoring may show whether this persistence will continue over time and which factors, including avoidance, influence *A. m.* var. *peirsonii* persistence.

Comment 14: One commenter asserted the proposed revised rule did not include all the best available science. Specifically the commenter asserted the proposed revised rule did not: (1) Incorporate data from monitoring other than those collected during 2004–2005; in particular no data was considered from the highest precipitation season (1997–1998); (2) take into consideration that more conservative design and implementation of conservation plans are required for species whose numbers are not stable (cited Noss *et al.* 1997); (3) take into consideration the hypothesis that genetically similar plants may not be able to produce viable seeds, and therefore populations must maintain a ''large number of individuals'' (cited Porter *et al.* 2005); and (4) take into consideration the transient or shifting nature of *Astragalus magdalenae* var. *peirsonii* habitat distribution. The commenter asserted the Dunes are documented to migrate in a southeasterly direction 16 to 66 ft (5 to 20 m) per year (cited Porter *et al.* 2005); therefore, the proposed critical habitat may not include the primary constituent elements (PCEs) in 100 years.

Our Response: Regarding the commenter's first assertion, we did take into consideration the 1998 data, but found the 2004 to 2005 data to be more appropriate for use in our critical habitat model. For example, the 2005 study more intensively sampled areas found to be occupied in the 1998 study, and distribution information had a finer geographic resolution (provided more spatial detail). Also, average annual rainfall during both sample seasons was approximately double the annual average in the ISDRA (which includes approximately 167,000 ac (67,582.50 ha) of the Dunes), and when data from all 1997–2005 surveys are overlaid on proposed revisions to critical habitat, all higher density distribution areas within sample sites appear to be captured. It is not likely that final revisions to critical habitat would have been altered by inclusion of data from years other than 2005. In the proposed revision to critical habitat (72 FR 41258; July 27, 2007), we cited Willoughby's 2001 report with 1997 to 1998 survey data 5 times; in the background section regarding variability in annual abundance of above-ground plants, rainfall variability, and data availability, we specifically stated that this information was considered in our methodology. Regarding the commenter's second assertion, although we do consider conservation and recovery standards when designing critical habitat, critical habitat is not a conservation plan. The design and implementation of conservation initiatives will be addressed by those charged with management of Dunes lands (e.g., the BLM). Regarding the commenter's third assertion, although Porter *et al.* (2005) did conclude that a ''large number of individuals'' must be maintained because of the need for high genetic diversity at the self-incompatibility loci (location of genes on the DNA strand), he did not give any quantitative estimate of what was meant by ''large.'' Porter also concluded that the number of individuals present in the ISDRA is ''quite high,'' and the number of individuals is not as important as the genetic diversity of individuals present. No information provided by Porter (2005) indicates that areas not included in proposed revisions to critical habitat (72 FR 41258; July 27, 2007) contain individuals with higher genetic diversity, or that densities we used as criteria for including areas in the critical habitat designation were too low. Regarding the commenter's fourth assertion, future recovery plans, habitat conservation plans, or other species conservation planning efforts will take into consideration changes in the distribution of essential features, if new information indicates such changes have occurred. Critical habitat can also be revised if new information indicates changes in the distribution of critical habitat have occurred (this current rule is such a revision). We do not believe it is prudent to predict dune position 100 years into the future, especially considering changes in temperatures, precipitation amounts, wind patterns, and extreme weather, including droughts, heavy precipitation, and climate change predicted globally (IPCC 2007, pp. 8–9) and in southern California (Field *et al.* p. 52; Seager *et al.* 2007, p. 1181).

Comment 15: One commenter alleged the proposed revised rule is flawed because it does not include all occupied habitat, and does not include any unoccupied habitat. Specifically: (1) No

scientific justification was given for the use of 100 plants per 2.5-ac (1-ha) density as a criterion for inclusion; (2) the 328 ft (100 m) distance between 2.5 ac (1 ha) core areas does not take into consideration the distance *Astragalus magdalenae* var. *peirsonii* inflated seedpods can disperse; (3) the area required to assure species persistence and recovery depends on numerous other attributes besides density (cited Burgman *et al.* 2001); and (4) recent science indicates occupied habitat containing populations on the periphery of the range of the species is essential to long-term species survival, especially with regard to preservation of local genetic diversity (cited Leppig and White 2006, Gapare *et al.* 2005, Channell and Lomolino 2000, Lammi *et al.* 1999) and global climate change (cited Safriel *et al.* 1994).

Our Response: Regarding the commenter's first statement, we are not aware of any published scientific information providing quantified density requirements for this species, and no such information was provided by the commenter. As discussed in the ''Summary of Changes from the Previously Designated Critical Habitat and 2007 Proposed Revised Rule'' section below, the reference to 100 plants/ha was an error in the proposed rule, and the actual density used was 480 plants/ha. Since no established density criteria exist for *Astragalus magdalenae* var. *peirsonii,* we chose the 480 plants/ha based on the qualitative observation that it captured the majority of large clusters of standing plants and the belief that these densities are likely to be correlated with high-quality habitat characteristics (e.g., suitable dune morphology, soil moisture) and high-density seed banks. We also note that this density only applied to cells selected in the first criterion as a starting point for inclusion, and was not exclusive of adjacent, potentially lower density areas. We subsequently expanded each cell to a size 16 times greater. The first criterion captured approximately half of the 2005 observed population, while after all subsequent criteria were applied, approximately 92 percent had been captured.

Regarding the commenter's second statement, we agree the potential distance seeds can be dispersed is greater than 328 ft (100 m); however, we aggregated the 2.5-ac (1-ha) core areas within 328 ft (100 m) of each other to maintain unoccupied space for wind dispersal of seeds between occupied dune bowls. This 328 ft (100 m) distance is a Dunes-wide approximation of the average distance between aggregated core areas.

Regarding specific comments 3 and 4, these comments, and all scientific papers cited by the commenter, are based on the density or importance of distinct biological populations on the periphery of a species' range and do not apply to *Astragalus magdalenae* var. *peirsonii* in the context of this rule. The entire range of *A. m.* var. *peirsonii* within the ISDRA appears to function as a single population with a semi-continuous distribution (includes movement areas, a semi-continuous distribution of standing plants) composed of spatially clustered, but not isolated, ''colonies'' (Porter 2005, p. 14, 21). Even colonies not connected by habitat for adult growth (for example, separated by a highway) would not be independent biological populations unless the non-growth habitat area significantly reduced genetic exchange among colonies. Although Porter (2005, p. 17) sampled 30 ''populations,'' the word population in that context refers to statistical, not biological, populations.

Comment 16: One commenter asserted that the proposed rule is flawed because it fails to address all primary constituent elements (PCEs). Specifically: (1) Habitat for the white-faced digger bee (*Habropoda pallida,* the most common pollinator), the digger wasp, or the European honeybee should have been included, because pollination is required in order for *Astragalus magdalenae* var. *peirsonii* to set viable seeds (cited Porter 2005); and (2) by removing core areas over 1,312 ft (400 m) from higher density core areas, the proposal fails to include areas containing the PCE ''intervening areas for gene flow and connectivity within the population.'' The commenter asserted that basic conservation biology principles dictate the need for large connected areas of habitat that support essential ecological functions such as pollinator habitat and seed dispersal (cited Noss *et al.* 1997). The commenter stated that although data on forage distances for native pollinators are not available, studies of other solitary bees found a foraging distance ranged from 492 to 1,969 ft (150 to 600 m) (cited Gathmann and Tscharntke 2002) and the median foraging range of the European honeybee is 3.8 mi (6.1 km) (cited Beekman and Ratnieks 2000).

Our Response: Primary constituent element number 2 as defined in the proposed revised rule states that habitat for insect pollinators, particularly the white-faced digger bee, is required for reproduction of *Astragalus magdalenae* var. *peirsonii*, and we believe the proposed revised critical habitat incorporates sufficient habitat to support these pollinator species. The information regarding pollinator movement distances appears to suggest that all areas within those distances from an occurrence of *A. m.* var. *peirsonii* should be included in critical habitat. We considered this approach, but concluded that doing so would include large areas of unoccupied habitat that are not essential to the conservation of *A. m.* var. *peirsonii*, because based on the best scientific information available to us, sufficient habitat exists to support pollinators within the designated critical habitat units. We agree that basic conservation biology principles support the value of connected areas of habitat of suitable size for supporting essential ecological functions such as pollinator habitat and seed dispersal. We believe this final revised critical habitat designation constitutes sufficient areas of connected habitat to support seed dispersal and pollination, and therefore does not violate basic conservation biology principles.

Comment 17: One commenter expressed the belief that the Service's biological methodology was sound and the criteria were appropriate. They stated the 16,106 ac (6,518 ha) of proposed critical habitat is ''more than adequate'' to protect *Astragalus magdalenae* var. *peirsonii* and ensure species' recovery.

Our Response: We appreciate the comment in support of this revised designation of critical habitat for *Astragalus magdalenae* var. *peirsonii.*

Comment 18: One commenter expressed the opinion that recreational use does not appear to negatively affect pollination of *Astragalus magdalenae* var. *peirsonii* by white-faced digger bees.

Our Response: Please see response to comment 13 above. Because the commenter did not provide any additional information or data to support their opinion, we were unable to consider the validity of the claim.

Comments Related to Legal and Procedural Issues

Comment 19: A number of commenters expressed concern regarding continued or additional closures of dune areas to OHV activity. In some cases it appeared they believed critical habitat designation was equivalent to closure, in other cases the designation would mandate additional or expanded closures, and in a few cases commenters were apparently confused regarding the reason for existing closures.

Our Response: Current closures in the ISDRA are not a result of critical habitat designation; they are a result of legal

proceedings and administrative actions taken by the BLM that pre-date the current critical habitat designation (69 FR 47330; August 4, 2004). Critical habitat designation does not establish a refuge, wilderness reserve, preserve, or other conservation area. If a project that requires Federal funding, permitting, or authorization (such as management actions by the BLM) is planned in designated critical habitat, and the Federal agency (such as BLM) determines the project may affect *Astragalus magdalenae* var. *peirsonii* or its critical habitat, the agency responsible for providing the funding or permit is required, in consultation with the Service, to ensure that the project will not jeopardize the continued existence of the species or adversely modify critical habitat. We assume that BLM will take the critical habitat designation into consideration during their revised ISDRA planning process, as well as other relevant factors. Areas within a critical habitat designation, particularly occupied areas (all in this case), are already subject to regulatory protections afforded by the section 7(a)(2) jeopardy standard of the Act.

Comment 20: A number of commenters suggested management strategies to reduce the threat of OHV impacts to *Astragalus magdalenae* var. *peirsonii*.

Our Response: Please see response to comment 5.

Comment 21: One commenter asserted that because the proposed critical habitat did not include all recently occupied habitats, it does not meet the recovery standard of critical habitat designation. The commenter asserted that species recovery standards must be met by critical habitat designations, not just species extinction thresholds needed to meet the jeopardy standard.

Our Response: Please see response to comment 1. We do not concur with the commenter's assertion that all recently occupied habitats need to be designated as critical habitat in order to achieve recovery of the species.

Comment 22: One commenter stated they were opposed to any exclusions of essential habitat based on coverage by management plans. They stated that all essential habitat needs special management because it is subject to impacts from motorized vehicle recreation, even in wilderness areas where closure violations occur, and the District Court in Arizona found that existence of a management plan is proof that an area qualifies as critical habitat (cited *Center for Biological Diversity, et al.* v. Norton, 240 F. Supp. 2d 1090, 1099).

Our Response: No exclusions based on management plans were proposed or made in this final rule.

Comments From Other Federal Agencies

Comment 23: One commenter stated that Fall weather does not have to be wetter than average to trigger germination; all that is required is a single rainfall event sufficient to induce germination (approximately 1 in (2.5 cm)), so Fall rainfall could still be below the Fall average. The commenter recommended we alter the assertion in 72 FR 41259, column 3, paragraph 2, last sentence (''* * * based on our current understanding of the taxon's life history, sufficient rain in conjunction with cool temperatures and wetter-than-average Fall weather appears to trigger germination events'') to reflect this point in the final rule.

Our Response: By ''germination event,'' we meant germination of a large number of *Astragalus magdalenae* var. *peirsonii* seeds at the same time. Thus, the statement in the proposed revised critical habitat rule is correct. While it may not require wetter-than-average Fall weather to trigger germination of some *Astragalus magdalenae* var. *peirsonii* seeds, wetter-than-average Fall weather is likely necessary to produce a mass germination event.

Comment 24: One commenter stated that there is no evidence that wind-driven sand provides the primary mechanism for seed scarification. The commenter stated that seeds usually have their hard seed coats rendered permeable by high summer temperatures or fire. In citing Baskin and Baskin (1989) as support for this statement, the commenter recommended we alter the statement in 72 FR 41263, column 3, paragraph 3, sentence 1 of the proposed revised rule to reflect this point in the final rule.

Our Response: It has been shown that wind-driven sand does scarify *Astragalus magdalenae* var. *peirsonii* seeds (Porter *et al.* 2005, p. 29); however, heat may be a contributing factor as well. We will consider this information in future management recommendations.

Comment 25: One commenter requested that we clarify the use of the word ''higher'' on 72 FR 41268 of the proposed rule which reads, ''Habitat within these subunits [Subunits 1A and 1B in the Mammoth Wash management area] contains a higher density of standing plants and is likely to support a large seed bank based on our analysis of BLM's 2004 survey data in addition to containing the PCEs required by the species.''

Our Response: We clarified this statement in this final rule to indicate that the habitat within Subunits 1A and 1B contained a higher density of standing *Astragalus magdalenae* var. *peirsonii* plants than areas adjacent to and outside of Subunits 1A and 1B based on our analysis of BLM's 2005 survey data.

Comments Related to the Draft Economic Analysis

Geographic Scope of Analysis

Comment 26: Several commenters believe that the Draft Economic Analysis (DEA) underestimates impacts because it fails to consider impacts outside of Imperial and Yuma Counties. Commenters noted that most visitors to the ISDRA do not come from the local area. Another commenter asserted that the DEA overstates regional economic impacts because there is no evidence that people visiting the ISDRA are purchasing their groceries or a significant portion of their ORV equipment and supplies in Imperial or Yuma County.

One commenter also provided additional information on the geographic and economic scope of the sand-recreation industry. Specifically, the commenter provided a summary by location of 488 advertisers that support the American Sand Association to demonstrate that only a small proportion of these businesses and associations are located in Imperial and Yuma Counties. This commenter also provided anecdotal evidence to support the fact that businesses outside of Imperial and Yuma Counties are likely to be affected by the proposed critical habitat. This commenter also noted that there are ''practical and sound theoretical reasons'' for limiting the geographic scope of the regional economic analysis to Imperial and Yuma Counties.

Our Response: In the DEA, as in the 2004 Economic Analysis, the focus of the analysis is on the two counties that are expected to bear the greatest impact of any reduced visitation by OHV enthusiasts to the ISDRA, relative to overall economic activity in these counties (see Section 3.3.2 of the DEA). Thus, any change in sales resulting from changes in ISDRA visitation would be expected to have a disproportionate effect on these economies. This study area was chosen based on information in the 2003 Final Environmental Impact Study (FEIS) of the BLM's Recreation Area Management Plan (RAMP) and discussion with the American Sand Association (ASA), Imperial County Board of Supervisors, and the Brawley

Chamber of Commerce. Additional text related to this issue has been added to the Final Economic Analysis (FEA) in Section 3.3.3.

Expenditure Estimates

Comment 27: Several commenters believe the per-vehicle trip expenditure estimate is understated because it does not include equipment purchases. Various commenters believe that the DEA failed to account for investment in high-value dune recreation equipment and specialty parts. Several commenters stated that if additional restrictions are imposed on duning activity as a result of the proposed critical habitat, this equipment will lose its value and no reinvestment in such assets will occur. One commenter asserted that the potential loss of revenue for the sheet metal fabrication industry will go into the billions of dollars, and two commenters provided information regarding the 2006 Sand Sports Super Show as support for the magnitude of the industry likely to be affected.

Our Response: Potential impacts on OHV sales are difficult to assess, as no data exist to model where OHV enthusiasts from the greater California and Arizona region purchase vehicles and other equipment, or how these purchases will change in response to reduced access within the ISDRA. As discussed in Section 3.3.2 of the DEA, given this uncertainty, the analysis applies a range of estimated average per-vehicle trip expenditures. The estimated range of expenditures ($279–$544 in 2007 dollars) represents average expenditures within the study area, and incorporates information from OHV user groups, including the ASA and the Off Road Business Association (OBRA).

The analysis recognizes the possibility that capital expenditures on OHV equipment could be impacted by limitations on OHV activity within the ISDRA. As shown in Exhibit 3–6 of the DEA, a portion (36 percent to 38 percent) of the expenditures per vehicle trip falls into the category of ''OHV Equipment Supplies and Services.'' The apportionment of the estimated expenditures per vehicle trip was based on a survey of OHV users conducted for the California Department of State Parks and Recreation (CADSPR). In a recent survey of ISDRA visitors (Haas/Collins 2006), respondents indicated that approximately 21 percent of expenditures were for ''Vehicle Maintenance and Repair.'' Although this figure is somewhat lower than the 36 to 38 percent applied in the DEA, the Haas/Collins expenditure category excludes expenditures on ''OHV equipment supplies.'' While overall cost estimates within the report remain unchanged, Section 3.2 of the FEA has been revised to provide additional information on investment in OHV equipment.

Comment 28: Various commenters provided information on what they consider ''average'' per trip expenditures ranging from $350–$450. One commenter stated his group represents about $1 million per year at the ISDRA, not including travel and food. Another commenter states Exhibit 3–6 on page 3–16 of the DEA underestimates the cost of fuel per trip.

Our Response: As discussed in Section 3.3.2, the DEA was based on the best available information on expenditures by visitors to the ISDRA. The estimated range of expenditures per vehicle trip to the ISDRA ($279–$544 in 2007 dollars) represents average expenditures within the study area (defined as Imperial and Yuma Counties), based on information from OHV user groups, including the ASA and OBRA. The per-trip expenditure information provided in public comment falls within the range of expenditures estimated in the DEA. As explained in Exhibit 3–6, OHV-related expenditure estimates were allocated to categories based on information from a report published by the CADSPR Off-Highway Vehicle Motor Vehicle Recreation Division. This study was considered the best available information for purposes of understanding the likely types of expenditures made by OHV recreators at the ISDRA.

Information Sources

Comment 29: Various commenters were concerned that the authors of the DEA did not contact OHV business owners. The commenters believe that only the actual business owners can provide the necessary information to develop a meaningful economic impact assessment.

Our Response: As described in Section 1.4 of the DEA, in developing the DEA, the authors of the study contacted various organizations that represent OHV-related businesses, including the ASA and OBRA, as well as local chambers of commerce. The expenditure estimates were based on input from OHV user groups, as detailed in Exhibit 3–6 of the DEA. Given timing and budget constraints, it was not possible for the study authors revising the economic analysis to contact each OHV-related business in the region.

Comment 30: Commenters question the accuracy of the DEA because data from a recent study of visitors to the ISDRA was not included. Specifically they cite the fact that the DEA apportions 15 percent of regional expenditures to Yuma County while the new data suggests proper allocation for Yuma County is 25 to 30 percent. One commenter asserted that the Haas/Collins study supports the level of expenditures estimated in the DEA under upper bound assumptions.

Our Response: As discussed in Section 3.3.2, the DEA was based on the best available information on expenditures by visitors to the ISDRA at the time the report was produced. The estimated range of expenditures per vehicle trip to the ISDRA ($279–$544 in 2007 dollars) represents average expenditures within the study area, based on information from OHV user groups, including the ASA and OBRA.

While the Haas/Collins studies provide useful information about visitors to the ISDRA, we are reluctant to rely on the Haas/Collins expenditure information in the DEA due to: (1) Poor wording of the key expenditure question in the survey, which is likely to have caused confusion regarding the allocation of a portion of total expenditures to the local area (e.g., for the line item ''Total Dollars Spent on your Most Recent Visit to ISDRA,'' it is unclear whether the respondent was supposed to enter the dollar amount spent for the entire trip (including at home and enroute), or only within 50 mi (80.4 km) of the ISDRA); (2) the exclusion of all day trip visitors from the survey (which may result in an upward bias in the expenditure estimates); and (3) the exclusion of all visitors staying in hotels or RV parks outside the ISDRA (the direction of bias that might result from this limitation in the sample frame are unknown). Nonetheless, we note that the Haas/Collins studies indicate average expenditures within 50 mi (80.4 km) of the ISDRA of $438 (when recalculated to represent an average of overall expenditures for all visitors surveyed), which is only slightly higher than the midpoint of our expenditure range for Yuma and Imperial Counties ($411.50).

The DEA apportions 15 percent of regional expenditures to Yuma County and 85 percent to Imperial County, based on information in the ISDRA RAMP (2003) and Business Plan (2003). The Haas/Collins studies do not provide reliable information regarding visitors' allocation of expenditures between Imperial and Yuma counties. The survey asks respondents to indicate the community through which they typically drive to visit the ISDRA (Question 5) and how frequently they stop in this community (Question 6), but respondents are not asked to

estimate expenditures in each community or county.

Comment 31: One commenter asserted that the upper bound welfare impact estimate of $85.9 million is understated because the $140 per ''lost'' trip figure is substantially lower than the expenditures estimated in the Haas/Collins studies. Another commenter also questioned the use of the $140 figure and compares this figure to his estimated expenditures of approximately $350 to $400 per trip.

Our Response: The $140-per-vehicle-trip figure referred to by these commenters represents a consumer surplus per trip, used to calculate economic efficiency effects stemming from the proposed designation. The $140 figure is not comparable to visitor expenditures per trip, such as those measured by the Haas/Collins studies. As discussed in the text box on page ES–5 of the FEA, efficiency effects describe net changes in national social welfare, based upon the idea that overall social welfare can be maximized by using resources in ways that yield the greatest benefits to society. In this case, the $140 per vehicle trip figure represents the consumer surplus to recreators that results from an OHV vehicle trip to the ISDRA. Section 1.2 of the FEA provides additional information on the difference between efficiency effects and distributional impacts.

Methodology for Estimating Visitation Impacts

Comment 32: Several commenters asserted that closures within one management area may result in a reduction in the effective accessibility of other areas, affecting visitation levels beyond what is accounted for in the DEA. Specifically, the BLM noted that designating critical habitat within the Ogilby management area could reduce OHV use in both the Ogilby and Dune Buggy Flats management areas. BLM believes the DEA should include impacts to visitation associated with the Dune Buggy Flats management area, despite the fact that no critical habitat was proposed in this management area.

Our Response: As discussed in Section 3.5 of the FEA, whether OHV access in the ISDRA will be limited in the future as a result of the critical habitat designation will depend on the outcome of future management decisions and consultations. Given this uncertainty, the Service has defined a range of potential changes to BLM's management that could be necessary to avoid an adverse modification finding in a future consultation, in addition to actions needed to avoid a jeopardy finding. Specifically, as described in the text box on page ES–4, the Service has indicated that the critical habitat portion of three management areas (Gecko, Mammoth Wash, and Ogilby) may be closed to OHV use to avoid an adverse modification finding.

Due to the nature of the visitation data available for the ISDRA (e.g., counts of vehicles are limited to ISDRA entry points), information is not available to determine, with specificity, which visitors or subset of visitors use the areas proposed for critical habitat designation. Recognizing this data limitation, and in the absence of a site-specific model to predict visitor behavior, the analysis reflects the uncertainty inherent in these economic impact estimates by bounding the potential impacts as discussed in Section 3.3 of the FEA. Though visitation at management areas where no critical habitat is proposed may be affected by closures, the Service does not believe it is possible to predict specific visitor behavior at the ISDRA in response to potential closures of portions of the proposed critical habitat, such that resulting potential costs can be quantified, given existing data as discussed in Section 3.3.3 of the FEA.

Comment 33: One commenter believes that the DEA fails to utilize accepted analytical methods to deal with risk and uncertainty about the actual closure plan. The commenter further provided text from U.S. Army Corps of Engineers guidance for addressing risk and uncertainty in water resources planning efforts, as an example of the type of method that could have been applied in the DEA to address the uncertainty underlying potential closures in the ISDRA resulting from the proposed critical habitat designation.

Our Response: As discussed in Section 3, paragraph 57 of the DEA, it is not possible, using existing data, to predict what the nature or scope of restrictions on OHV use will be, or to model OHV recreators' behavior in response to these future management actions. While there are a number of accepted approaches to deal with uncertainties, this analysis bounds the potential economic impacts using a lower- and upper-bound assessment framework. The method referred to by the commenter is most useful when detailed information is available regarding the likelihood and risks associated with each option identified. In this case, this type of information was not available. The FEA does, however, identify and discuss the uncertainty factors underlying the analysis in Section 3.3.3.

Technical reviewers of the methodology applied in the DEA concluded that this approach is appropriate given the uncertainty associated with future policy decisions, and the lack of detailed behavioral data regarding OHV enthusiasts' use of the ISDRA.

Comment 34: BLM commented that if closures were necessary it would not be able to close only the critical habitat areas, but would likely have to expand the area closed to make boundaries that would be enforceable, thus potentially increasing the expected impacts on visitors. For example, BLM stated ''a vehicle closure surrounding proposed critical habitat Subunits 2A and 2B in the Gecko MA (with some overlap into the Glamis MA) could encompass as much as 9,500 ac (3,845 ha), more than twice the 3,983 ac (1,612 ha) in those two critical habitat subunits.''

Our Response: As discussed in Section 3.3.3 of the DEA, neither the Service nor BLM is able to forecast with certainty whether critical habitat designation will result in closures of portions of the ISDRA. BLM has indicated that it will undertake to revise its RAMP after final designation of critical habitat; this revision will be a lengthy process, during which BLM will consider various management options, and the ultimate outcome of this planning process and future section 7 consultation is unclear. Therefore, the most reasonable assumption based on the best available information was to model the upper bound as a scenario in which critical habitat designation could potentially result in closure of the critical habitat portions of the Gecko, Mammoth Wash, and Ogilby management areas.

Because the EA indicates the upper bound impacts are linearly related to the acreage of potential closures (see FEA, p. 3–27), doubling the acreage potentially closed would double the estimated upper bound impacts. However, we again note that specific management actions taken by BLM with regard to OHV use closures in the ISDRA are uncertain and will depend on the outcome of management planning activities and section 7 consultation.

Comment 35: Several commenters maintained that the DEA should have taken into account the relative attractiveness of the proposed critical habitat from an OHV use standpoint. These commenters asserted that the assumption of uniform use throughout the management areas is not justified. Commenters suggested that the economic analysis should incorporate information regarding the area of active

dunes that are proposed to be part of critical habitat compared to the total area of active dunes within a particular management area, as opposed to comparing the area of critical habitat to the total area of the entire management area. In particular, BLM stated ''the vegetation type, active dune/psammophytic scrub, contains the active dunes that are the focus of the recreational use in the Dunes. Use in the other vegetation types of the Dunes is incidental to the use in the active dunes.'' BLM also provided a map of the ISDRA illustrating where each vegetation type occurs in the ISDRA as part of its comments.

Our Response: It is not possible, using existing data, to predict the percentage of OHV recreators who visit areas of the ISDRA that are proposed for critical habitat designation. Lacking detailed data and user patterns, the DEA modeled visitation based on BLM vehicle counts and assumes an equitable distribution of visitation within each management area. Research was conducted to determine if OHV track density data or other information was available to better understand OHV use patterns in the Dunes to predict impacts to visitation. Through discussions with the BLM, it was determined that available data did not provide the necessary information to give an accurate picture of OHV use throughout the ISDRA or the number of visitors using the proposed critical habitat areas. Thus, the analysis relied on the best available information on visitation to the ISDRA—the BLM vehicle counts by management area.

In its comment letter, BLM provided new information regarding the distribution of OHV use within the ISDRA. The economic analysis has been refined based on this information, which suggests that OHV recreation occurs primarily within the active dune/psammophytic scrub vegetation type. In particular, BLM indicated that the active dune vegetation type represents approximately 72 percent of Gecko management area, 59 percent of the Ogilby management area, and 86 percent of the Mammoth Wash management area. The critical habitat falls completely within the active dune vegetation type. Limiting the baseline OHV recreation area to this vegetation type results in an increase in the estimated upper bound welfare impacts from 16 to 70 percent, depending on the management area. Specifically, assuming that the active dune/psammophytic scrub vegetation type is the focus for OHV recreation, the high-end upper bound welfare impacts resulting from a reduction in OHV use have been revised as follows: Impacts for Gecko increase from $81.3 million to $113 million (undiscounted); impacts for Ogilby increase from $4.52 million to $7.60 million (undiscounted); and impacts for Mammoth Wash increase from $68,600 to $79,400 (undiscounted). At the upper bound, regional economic impacts increase from $24.2 million to $34.0 million in total output and from 529 jobs to 743 jobs, at the high end. While these revisions change the absolute level of the impacts at the high end, the ranking of the management areas remains unchanged (e.g., Gecko retains the highest impacts by far at $113 million undiscounted). The revised results are presented in the FEA in detail.

Comment 36: To support the argument that certain areas should be excluded from the critical habitat designation, in its comment letter, BLM provided ''corrected'' impact estimates. BLM attempted to adjust the results presented in the DEA to reflect only the vegetation type that BLM believes is actively used for OHV recreation rather than the entire management area, and included impacts to vehicle trips associated with Dune Buggy Flats and Glamis management areas for which the DEA does not anticipate any impact.

Specifically, for Subunits 2A and 2B, located in the Gecko and Glamis management areas, the commenter suggested that upper bound welfare impacts should be adjusted to $121.8 million (as opposed to the $81.3 million estimated in the DEA). Similarly, for Subunits 2A and 2B, the commenter suggested that the regional economic impacts should be $34.3 million and 751 jobs (as opposed to the estimated $22.9 million and 501 jobs).

Our Response: As addressed above, BLM has raised several issues with regard to the method for estimating lost vehicle trips that could potentially result from the proposed critical habitat designation. The economic analysis has been revised based on information indicating that OHV recreation occurs primarily in the active dune/psammophytic scrub vegetation type. As illustrated in the FEA, the revised results are roughly similar to what BLM has calculated. Note, however, while these revisions increase the absolute level of impacts at the upper bound, the relative ranking of areas by level of impact remains the same.

Comment 37: One commenter noted that the DEA does not recognize that the limiting factor in visitation is the availability of camping spaces, and the area has already reached or exceeded the reasonable carrying capacity. The commenter similarly asserted that the need to limit air quality deterioration should be taken into account as a factor in the capacity of the ISDRA in forecasting visitation growth in the economic analysis. The commenter stated that weekends are already filled to capacity.

Our Response: As discussed in Section 3.5, the baseline visitation forecast in the DEA is based on information from the FEIS for the ISDRA RAMP (2003). As noted by the commenter, the FEIS discusses the fact that visitor supply is constrained by availability of camping supply, and that on some holiday weekends, visitation exceeds this supply. However, BLM noted that the total annualized visitor supply is expected to be adequate, and that management actions would be expected to temporally redistribute some of the visitation to the ISDRA. As discussed in the DEA in Section 3.5, the carrying capacity is determined by BLM based on the Recreation Opportunity Spectrum (ROS) class, which defines the level of infrastructure and camping capacity within each management area. Further, as discussed in the RAMP FEIS (p. 62), one of the management actions under the preferred alternative includes implementing actions to mitigate for contributions to the non-attainment due to activities at the ISDRA as requested by the Imperial County Air Pollution Control District (ICAPCD). In 2006, BLM, in cooperation with the ICAPCD, prepared a Dust Control Plan outlining dust control measures at the ISDRA. These measures include watering of high OHV use areas during high-use times and maintenance of wilderness areas and paved roads in the ISDRA. Thus, campground supply and air quality deterioration have already been incorporated into the baseline visitation assumptions in the DEA because they were considered in the development of the FEIS.

Comment 38: One commenter asserted that the DEA relies on the flawed assumption that ''the closures now in place lead to a decrease in visitation in every year since 2001 and will continue to do so into the future.''

Our Response: The approach to estimating impacts to visitation resulting from the critical habitat designation is explained in detail in Section 3.5 of the FEA. As discussed in this section and in Section 1.3.1, the baseline for the analysis of post-designation impacts assumes that current closures will be lifted after critical habitat is finalized, and that with or without critical habitat, some form of limited or managed use or complete closure of the Adaptive Management Area would be likely.

Comment 39: A commenter noted that estimated visitation impacts forecasted in the DEA erroneously begin the estimate of ''visitation with critical habitat'' at approximately 150,000 vehicle trips below current levels in 2008.

Our Response: The commenter is correct. In the DEA, Figure 3–2 included incorrect information for the ''with critical habitat'' vehicle trips. Figure 3–2 has been corrected in the FEA. This error does not affect the impact estimates or results of the analysis; visitation figures throughout the remainder of the DEA are correct.

Comment 40: One commenter asserted that Exhibit 3–5 underestimates the number of trips made per year by visitors to the ISDRA and that recent surveys conducted by the ASA have indicated most visitors go seven times a year.

Our Response: The most recent survey of visitors to the ISDRA (Haas 2006) finds that ISDRA users visit approximately six times per year. The DEA estimate of three trips per year was based on available information (ISDRA Business Plan (2003), confirmed with various OHV user groups including ASA and ORBA). Exhibit 3–5 has been updated to include the information from the Haas (2006) report. Note that the data in Exhibit 3–5 is provided for informational purposes, and these revisions do not affect the results of the analysis.

Miscellaneous Issues

Comment 41: The BLM commented that Mammoth Wash management area is the only area that now provides the semi-primitive motorized recreation opportunity spectrum (ROS) category. BLM stated that designation of critical habitat in Subunits 1A and 1B could potentially result in BLM closing most of the sandy areas in the Mammoth Wash management area to OHV use to implement enforceable and manageable boundaries around the critical habitat. The commenter further maintained such a closure would result in the elimination of the semi-primitive motorized ROS category from the suite of recreational opportunities available to Dunes recreationists and would adversely affect the families that recreate in the area.

Our Response: As discussed in Section 3.3 of the DEA, upper bound impacts are based on the assumption that a portion of visitors to this area may choose not to recreate at the ISDRA as a result of the proposed critical habitat designation. The DEA does not distinguish between different types of OHV recreation at the ISDRA, as information is not available to value different types of OHV recreation. To the extent that visitors to the Mammoth Wash management area value their experience at a higher or lower level than that anticipated in the DEA or have higher or lower than average expenditures per trip, the DEA may underestimate or overestimate the impacts of critical habitat designation. However, given available information, the analysis is not able to differentiate between types of OHV recreation at the ISDRA.

Comment 42: A number of commenters stated that use restrictions, particularly in the Gecko Road and Dune Buggy Flats areas, will have a substantial drag on the local and regional economy, especially small businesses. Due to the likely economic impacts of increased management constraints that block dune access from the camping areas at Gecko Road and Dune Buggy Flats, commenters requested that the Secretary of the Interior (Secretary) exclude these areas (portions of Units 2 and 3), from the final critical habitat designation.

Our Response: We have assessed the information provided by commenters and the revised economic analysis and believe that excluding a portion of the critical habitat is appropriate. See the ''Application of Section 4(b)(2) of the Act'' section for details.

Comment 43: A commenter stated that the Secretary should identify key travel corridors (especially those with RS 2477 status) and exclude them from final critical habitat.

Our Response: We did not identify any key travel corridors within the final revised critical habitat designation, and we are not aware of any R.S. 2477 corridors within the final revised critical habitat designation.

Benefits Transfer

Comment 44: Several commenters noted that the welfare value per OHV vehicle trip applied in the economic analysis is inappropriate for benefits transfer, because the type of OHV use and the recreational experience valued in the two studies used for transfer are too dissimilar from OHV recreation at the ISDRA. Specifically, commenters cited differences between the ISDRA and the areas used for OHV recreation in North Carolina and Utah, and differences in the type of equipment used.

In particular, one commenter stated that the DEA fails to justify its use of the benefit transfer method. This commenter further outlines specific criteria in the OMB guidelines that he believes the benefits transfer studies do not meet. In particular, the commenter believes the following criteria are not met: (1) The good, and the magnitude of change in that good, should be similar in the study and policy context; (2) the relevant characteristics of the study and policy contexts should be similar; (3) the availability of substitute resources should be similar; (4) if you can choose between transferring a function or a point estimate, you should transfer the entire demand function; (5) if the study examines a resource that is unique or has unique attributes, you should not transfer benefit estimates to value a different resource and vice versa; and, (6) the study should not apply an ex ante valuation estimate to an ex post policy context. If a policy yields significant change in the attributes of the good, you should not use the study estimates to value the change using benefits transfer.

Our Response: Section 3.3.1 of the DEA provides the justification addressing how the benefits transfer applied in the analysis meets the criteria outlined in the OMB guidelines for use of benefits transfer. Each of the issues raised by the commenters is explicitly addressed in this section of the DEA. Specifically, paragraph 75 addresses how the benefits transfer conforms to OMB criteria, with respect to: the issue of the magnitude of change, the issues of uniqueness of the resources and availability of substitutes, and the criteria related to the valuation framework (e.g., ex ante versus ex post). In addition, paragraph 83 addresses the use of transfer of a single point estimate rather than an entire demand function.

As described in paragraph 79, to estimate the consumer surplus value of an OHV trip, the analysis obtained relevant studies from the resource economics literature. In developing the 2004 DEA, two relevant studies were identified: Englin *et al.* (2003) and Jakus (2003). Technical review of the 2004 economic analysis supported the use of these two studies. During the development of the 2007 DEA, a more substantive literature review was conducted to identify relevant economic research regarding demand for OHV recreation sites; this review did not identify any other applicable studies.

Ideally, the DEA would employ a California-or Arizona-based study to determine the welfare value of OHV recreation. However, no such study was identified. The estimates used were contemplated by technical reviewers and determined to be the most reasonable given currently available information. As discussed in Section 3.3.1 of the DEA, the Service believes

that this use of benefits transfer is justified under the OMB guidelines.

Comment 45: One commenter questioned the use of the travel cost method in the studies applied in the benefits transfer. The commenter argued that this method systematically undervalues recreational resources. Specifically, the commenter discussed the issue that the travel cost method does not account for ''annual fixed costs'' or ''investment in durable equipment.'' The commenter argued that because ISDRA users make fewer trips per year to the ISDRA than visitors to the Utah and North Carolina sites, a higher total cost must be allocated over fewer annual trips and that if these fixed costs were factored in, the marginal value per trip would be higher for ISDRA users.

Our Response: Both of the studies (Englin *et al.* 2003 and Jakus 2003) relied upon for the benefits transfer of a welfare value for an OHV trip are based on travel cost models. As discussed on page 3–16 of the FEA, to address uncertainty associated with value transfer from these two specific studies, the broader valuation literature on off-road driving activities was reviewed. This review looked at values estimated using a variety of methodologies, including travel cost and contingent valuation methodologies, and found that other valuation studies of off-road driving activities estimate similar consumer surplus values. A recent literature search conducted by Dr. J.R. DeShazo of the University of California (included in Appendix E of the DEA) confirmed that these two studies were the most appropriate for benefits transfer in this case.

The travel cost method is widely accepted for establishing the social welfare value of recreational activities. For example, the travel cost method is explicitly listed as an acceptable valuation methodology in the Department of the Interior's Natural Resource Damage Assessment Regulations (43 CFR 11 (1995), as amended at 61 FR 20609, May 7, 1996). These regulations state: ''The travel cost methodology may be used to determine a value for the use of a specific area.'' Similarly, the Environmental Protection Agency's Guidelines for Preparing Economic Analyses (EPA 240–R–00–003, September 2000) state ''Recreation demand models, including the travel cost model, the random utility model (RUM), and other approaches, may be used to assess nonmarket benefits associated with recreation activities'' (p. 73).

Comment 46: One commenter stated that the welfare impacts of up to $140 per trip are based on studies in areas that are not analogous to the Dunes. The commenter noted that the ''crowding'' effects that are discussed in the literature cited regarding a day at the beach are extrapolated to an assumed ''crowding'' in the OHV use areas on the Dunes. The commenter further suggested that the most significant factor affecting welfare value of OHV recreators at the ISDRA results from crowding of camping areas rather than the crowding in the OHV use area in the Dunes.

Our Response: The DEA estimates upper bound welfare impacts based on the assumption that some people who would have made a trip to the ISDRA for OHV recreation will choose not to due to closure of portions of the proposed critical habitat, as discussed in Section 3.3. As detailed in Exhibit 3–7, the analysis does not account for quantified economic losses associated with a reduced quality of experience (i.e., consumer surplus) for users who continued to take OHV trips to the ISDRA under closures and experienced increased congestion or those users who visited less desirable substitute sites. While the literature review included in Appendix E does make reference to several studies that discuss the effects of crowding on the consumer surplus of beachgoers, these studies are not applied in the DEA.

As discussed in paragraph 54, the DEA focuses on OHV recreation, as this is the primary type of recreation expected to be affected by the critical habitat designation. As acknowledged by the commenter, ''the proposed critical habitat has no effect on the limited number of campsites to accommodate RVs and cars—these are management issues of funding issues of BLM's that are wholly independent of the PMV critical habitat issue.''

Although the welfare or social impacts to the recreational experience in the Dunes were not quantified in the economic analysis, we have considered such impacts in our analysis under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section below for a detailed discussion).

Comment 47: The estimates of welfare loss do not include losses that could be experienced by ''remaining'' recreators who ''could experience welfare losses due to impacts to the level of enjoyment derived from recreating in the ISDRA.''

Our Response: This limitation of the analysis is explicitly noted in Exhibit 3–7 of the FEA. As discussed in paragraph 79, in the absence of a site-specific model to understand visitor behavior at the ISDRA, the analysis bounds impacts based on assumptions about visitor behavior. However, as noted above, we have considered such welfare and social impacts in our analysis under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section below for a detailed discussion).

Regional Economic Impact Analysis

Comment 48: One commenter noted the limitations inherent of the use of the IMPLAN model. Specifically, the commenter stated that IMPLAN is a static model and does not incorporate any economic readjustment. The commenter pointed out that this readjustment may or may not occur fairly quickly. The commenter also noted that the IMPLAN analysis relies on 1998 data. The commenter remarked that, especially in Yuma, the local economy has undergone significant change since 1998 and that generally this would result in higher multipliers.

Our Response: The DEA explicitly notes these limitations in Exhibit 3–7, as acknowledged by the commenter. As discussed in the DEA, the IMPLAN model that is used to estimate regional economic impacts is a static model and does not account for the fact that the economy will adjust. IMPLAN measures the effects of a specific policy change at one point in time. Over the long run, the economic losses predicted by the model may be overstated as adjustments such as re-employment of displaced employees occurs.

Also, as discussed in the DEA, the IMPLAN model that is used to estimate regional economic impacts relies on 1998 data. If significant changes have occurred in the structure of Imperial and Yuma County economies, the results may be sensitive to this assumption. The direction of any bias is unknown, but is likely to be small.

Comment 49: One commenter noted that the DEA lacked a discussion of lost Federal and State income taxes that could result from this designation.

Our Response: As shown in Exhibit C–3, at the upper bound, the DEA estimates potential regional economic impacts related to indirect business taxes ranging from $0.7 million to $1.7 million, depending on the visitation growth assumption.

Inclusion of Other Impacts/Benefits

Comment 50: One commenter noted that the value of social benefits obtained through OHV recreation is not addressed in the report. Specifically, the commenter maintained that to the extent that families recreating at the

ISDRA may experience social benefits related to the ''community'' aspect of ISDRA recreation, including forming bonds and ''strengthening the family as a unit and children as individuals,'' these values should be addressed at least qualitatively in the report.

Our Response: As the commenter noted, it is likely that OHV recreators do derive social benefits related to this activity that could be affected if their participation in OHV recreation declines. For example, a study cited in the FEIS of the ISDRA RAMP (Outdoor Recreation In America 1999: The Family and the Environment), provides support for the fact that Americans feel outdoor recreation strengthens the family as a unit, and families use outdoor recreation as a way to form bonds and transfer important family values to their children. To the extent that the values of social benefits are reflected in individual's and group's decisions to visit the ISDRA, and the values assigned to those trips, these values are included in the analysis. An assessment of these types of values would require an understanding of the activities that recreators at the ISDRA would choose to participate in, absent a trip to the ISDRA.

While the impacts resulting from a loss of social benefits are not quantified in the report due to a lack of information on the value of these benefits, Section 3.3.3 of the FEA has been revised to describe this limitation of the analysis of welfare impacts, and we have considered such unquantified impacts in our analysis under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section below for a detailed discussion).

Comment 51: One commenter noted that no basis was given for project modification costs for signage of $200,000 per year. The commenter further stated that these costs should not be attributed to the critical habitat designation but rather should be considered due to the failure of ORV users to comply with the law.

Our Response: The basis for these costs is explained in footnote 100 in the DEA, which states that the BLM estimates it could cost up to $200,000 per year to install and maintain signage for closures of the proposed critical habitat in Gecko, Mammoth Wash, and Ogilby. This estimate was based on BLM's recent experience with contractors' bids to install and maintain signage for the closures now in place. As discussed in Section 4.3.2, these costs would result from the designation of critical habitat, which could trigger additional restrictions on OHV use. The Service believes these costs are accurately attributed to the critical habitat designation, because regardless of individual OHV recreator's behaviors, the BLM would be likely to install and maintain signage around any closures as a matter of public information and outreach.

Comment 52: One commenter asserted that the DEA should treat any increase in BLM costs (e.g., for signage—purchase of goods and services) as an offset to the regional economic impacts.

Our Response: To estimate upper bound regional economic impacts, the DEA did not incorporate an increase in spending by the BLM as an offset to losses in regional expenditures due to a potential reduction in OHV use of the ISDRA. As discussed in Section 4.3.2, anticipated project modification costs per year include approximately $93,750 for additional law enforcement and $200,000 for implementing and maintaining signage. Specifically, total project modifications of $293,750 represent from 1 to 3 percent of the estimated $11.3 million to $24.3 million in impacts to direct expenditures as a result of potential reductions in OHV use due to critical habitat. Thus, while the analysis does not include these as an offset to regional economic impacts, the impact of including these as an offset would be small. Additional text has been added to Section 3.5.2 of the FEA to note this limitation of the upper bound estimates.

Comment 53: One commenter stated that the Service should at a minimum quantify the benefits of protecting these lands as critical habitat to other rare, endemic species; the health benefits that may accrue if any reduction in ORV use improves air quality; and the cost savings to the local economy that may result from improved air quality including reducing health costs.

Our Response: In the context of a critical habitat designation, the primary purpose of the rulemaking (i.e., the direct benefit) is to designate areas that contain the physical and biological features that are essential to the conservation of listed species. The designation of critical habitat may result in two distinct categories of benefits to society: (1) Use; and (2) nonuse benefits. Use benefits are simply the social benefits that accrue from the physical use of a resource. Visiting critical habitat to see endangered species in their natural habitat would be a primary example. Non-use benefits, in contrast, represent welfare gains from ''just knowing'' that a particular listed species' natural habitat is being specially managed for the survival and recovery of that species. Both use and non-use benefits may occur unaccompanied by any market transactions.

A primary reason for conducting this economic analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Economic impacts can be both positive and negative and, by definition, are observable through market transactions.

Where data are available, this economic analysis attempts to recognize and measure the net economic impact of the proposed designation. For example, if the fencing of a species' habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would recognize the potential for a positive economic impact and attempt to quantify the effect (e.g., impacts that would be associated with an increase in tourism spending by wildlife viewers). In this particular instance, however, the economic analysis did not identify any credible estimates or measures of positive economic impacts that could offset some of the negative economic impacts.

Under Executive Order 12866 (E.O. 12866), Office of Management and Budget (OMB) directs Federal agencies to provide an assessment of both the social costs and benefits of proposed regulatory actions. OMB's Circular A–4 distinguishes two types of economic benefits: Direct benefits and ancillary benefits. Ancillary benefits are defined as favorable impacts of a rulemaking that are typically unrelated, or secondary, to the statutory purpose of the rulemaking. In the context of critical habitat, the primary purpose of the rulemaking (i.e., the direct benefit) is the potential to enhance conservation of the species. The published economics literature has documented that social welfare benefits can result from the conservation of endangered and threatened species. In its guidance for implementing E.O. 12866, OMB acknowledges that it may not be feasible to monetize, or even quantify, the benefits of environmental regulations due to either an absence of defensible, relevant studies or a lack of resources on the implementing agency's part to conduct new research. Rather than rely on economic measures, the Service believes that the direct benefits of the proposed rule are best expressed in

biological terms that can be weighed against the expected cost impacts of the rulemaking.

In evaluating the benefits of excluding versus including specific areas, we have accordingly considered the biological benefits that may occur to a species from designation (see ''Application of Section 4(b)(2) of the Act'' section below), but these biological benefits are not addressed in the economic analysis.

Small Business Impacts

Comment 54: One commenter stated that the assumptions applied to estimate the number of small businesses affected should have been refined, for example, by ''location (businesses closest to freeway exits, for example) and perhaps other factors as screening mechanisms.'' The commenter further suggested using the United Desert Gateway's *Off-Highway Vehicle Recreation Guide 2007–2008* to estimate the number of local affected businesses to be 546 within Imperial and Yuma Counties.

Our Response: As discussed in Section A.1.2, and illustrated in Exhibit A–2, the DEA includes information about the number of small businesses in OHV-related economic sectors in the study area. Due to data limitations, the analysis assumes that all of the small businesses in the region in the relevant categories are affected. Information is not available to determine how OHV recreators chose the businesses where they make expenditures.

The economic analysis has been revised in the FEA to provide a discussion of the additional information provided by the commenter. As the commenter noted, the total number of small businesses estimated by the commenter (546) is somewhat less than the 827 small businesses estimated in the DEA. We are unclear how the businesses listed in the United Desert Gateway's guide were chosen for inclusion, or whether these are paid advertisers (and thus not a representative sample of businesses). The data source used in the DEA (a Dialog search of the Dun and Bradstreet database) is considered the best, most complete information available to determine the number of small businesses potentially affected by the designation.

Comment 55: One commenter suggested that the base of small business types potentially affected should be expanded. The commenter noted that the Haas/Collins studies provide information regarding the breakdown of expenditures that provides a different picture of local expenditures than the categories of expenditures included in the DEA, which may have led the study authors to focus on additional types of small businesses in its analysis.

Our Response: As discussed in Section 3.3.2 of the DEA, OHV-related expenditure estimates were allocated to categories based on information from a report published by the CADSPR Off-Highway Vehicle Motor Vehicle Recreation Division. This study was considered the best available information for purposes of understanding the likely types of expenditures made by OHV recreators at the ISDRA.

While the Haas/Collins studies provide useful information about visitors to the ISDRA, we are reluctant to rely on the Haas/Collins expenditure information in the DEA due to (1) poor wording of the key expenditure question in the survey, which is likely to have caused confusion regarding the allocation of a portion of total expenditures to the local area; (2) the exclusion of all-day trip visitors from the survey; and (3) the exclusion of all visitors staying in hotels or RV parks outside the ISDRA.

The categories of expenditures utilized in the Haas/Collins studies are somewhat different from those included in the CADSPR survey. However, 88 percent of the expenditures identified in the Haas/Collins studies fall into expenditure categories included in the DEA. Thus, if the DEA had relied on the categories of expenditures identified in the Haas/Collins studies, it is not clear that the NAICS codes that were used to identify the number of small businesses would have been different.

Summary of Changes From the Previously Designated Critical Habitat and 2007 Proposed Revised Rule

On August 4, 2004, we designated critical habitat for *Astragalus magdalenae* var. *peirsonii* comprising a total of 21,863 ac (8,848 ha) (69 FR 47330). On July 27, 2007 (72 FR 41258), we proposed to revise this designation to 16,108 ac (6,519 ha). This final revised critical habitat includes 12,105 ac (4,889 ha) in three units, after excluding Unit 2 (4,003 ac (1,620 ha)) under section 4(b)(2) of the Act (see ''Application of Section 4(b)(2) of the Act'' section below for a detailed discussion). All of the land designated in this final revised rule was proposed as critical habitat in the 2007 proposed revised rule. These changes are summarized in Table 2.

TABLE 2.—SUMMARY OF CHANGES BETWEEN THE AUGUST 4, 2004, CRITICAL HABITAT DESIGNATION; THE JULY 27, 2007 PROPOSED REVISED CRITICAL HABITAT; AND THIS FINAL REVISED DESIGNATION

2003 Proposed rule (68 FR 46143)		2004 Final rule (69 FR 47330)		2007 Proposed revised rule (72 FR 41258)		2008 Final revised rule	
Unit/subunit	Area (ac (ha))	Unit/subunit	Area (ac (ha))	Unit/subunit	Area (ac (ha))	Unit/subunit	Area (ac (ha))
1A	16,510 (6,681)	1A	16,509 (6,681)	1A, 1B, 1C, 1D	4,675 (1,892)	1A, 1B, 1C, 1D	4,675 (1,892)
1B	34,333 (13,894)	1B	[1] 5,355 (2,167)	2A, 2B, 3A, 3B, 3C.	[4] 11,215 (4,539)	3A, 3B, 3C	[6] 7,212 (2,919)
1C	1,490 (603)	1C	0 [2] (0)	4	[5] 218 (88)	4	218 (88)
1D	447 (181)	1D	0 [3] (0)	(none)	(none)	(none)	(none)
Totals	52,780 (21,359)		21,863 (8,848)		16,108 (6,519)		12,105 (4,899)

[1] 28,978 ac (11,727 ha) excluded from final designation under section 4(b)(2) of the Act.
[2] Excluded from the final designation under section 4(b)(2) of the Act.
[3] Removed from the final designation; not essential to the conservation of the species.
[4] Includes 331 ac (134 ha) not included in the 2004 final designation.
[5] Includes 75 ac (30 ha) not designated in the 2004 final designation.
[6] 4,003 ac (1,620 ha) excluded from final designation under section 4(b)(2) of the Act.

(1) The reduction in total area of identified essential habitat from the 2003 proposed critical habitat rule and the 2004 final critical habitat rule is primarily the result of a revised methodology to delineate critical habitat. The model used to delineate critical habitat boundaries in the 2003 proposed rule was based primarily on species survey data collected by the BLM from 1998 through 2002 along transects throughout the areas of the Dunes occupied by *Astragalus magdalenae* var. *peirsonii*. Each transect was composed of a series of grid squares measuring approximately 0.45 mi (0.72 km) on each side. In order to create the 2003 model, we used the coarse scale BLM survey data to extrapolate the values for four variables: (1) The presence or absence of standing plants of *A. m.* var. *peirsonii*; (2) the abundance of *A. m.* var. *peirsonii*; (3) the frequency of occurrence of *A. m.* var. *peirsonii* over the survey years; and (4) the number of associated rare psammophytic plant taxa present. These variables were scored, then standardized, and finally compiled. Because of the dynamic nature of the distribution of this plant, the cyclic nature of suitable climatic regimes, and the presence of a seed bank for *A. m.* var. *peirsonii*, grid squares where this plant was not found were included in critical habitat if they were contiguous with occupied grid squares (68 FR 46143). The data used to create the 2003 model was considered the best available at that time and allowed us to identify areas known to be occupied by *A. m.* var. *peirsonii* as well as areas likely to be occupied based on the presence of suitable habitat (e.g., presence of associated psammophytic plant taxa).

As discussed in the ''Background'' and ''Criteria Used to Identify Critical Habitat'' sections of this rule, the model used to delineate revised critical habitat boundaries in this revised rule is based on survey data collected by BLM in 2005 (Willoughby 2005b). The model used to delineate the revised critical habitat is based on data collected along a larger number of transects (510 versus 34) during a year of the highest recorded *A. m.* var. *peirsonii* abundance. These data are more robust than the data used in the 2003 model, primarily documenting occupancy over a larger area of the Dunes and at a finer spatial resolution (82 ft x 82 ft (25m x 25m) grid cells) during superior environmental conditions instead of on the presence of suitable habitat (e.g., the presence of associated rare psammophytic plant taxa), as was used in the 2003 model.

In summary, we consider the model used to delineate revised critical habitat boundaries in this revised rule to more accurately depict the primary areas occupied by the species than the model used to delineate the 2003 proposed critical habitat boundaries. We determined that the identification of areas determined to meet the definition of critical habitat in the 2003 proposed designation was over-inclusive due to limited data and the rough spatial scale of the data. The 2005 data now provide more specific and reliable information regarding abundance and distribution, allowing us to more precisely identify habitat essential to the conservation of the species associated with core population areas.

(2) This final revised rule designates as critical habitat 5,560 ac (2,250 ha) of lands within Subunits 3A, 3B, 3C, and Unit 4 that were excluded from the 2004 final critical habitat designation under section 4(b)(2) of the Act (see Table 2 above). In 2004, the Secretary determined that the economic benefits of excluding these lands outweighed the conservation benefits of including these lands in the designation due to the potential economic costs of the designation (69 FR 47330). At this time, the Secretary has determined that the numerous benefits of excluding lands in Subunits 2A and 2B outweigh the conservation benefits of including these lands in this final revised designation (see ''Application of Section 4(b)(2) of the Act'' section below for a detailed discussion). Lands in Subunits 2A and 2B were also excluded from the 2004 final designation (69 FR 47330).

(3) We are excluding from this final revised designation of critical habitat Unit 2 in the Gecko and Glamis Management Areas based on disproportionately high economic and social impacts associated with the designation of this unit as critical habitat relative to the overall designation. We believe that the benefits of excluding these specific areas from the designation outweigh the benefits of including the specific areas. We have also determined that the exclusion of these areas from the final designation of critical habitat will not result in the extinction of *Astragalus magdalenae* var. *peirsonii*. These exclusions are discussed in more detail in the ''Application of Section 4(b)(2) of the Act'' section below.

(4) A number of the comments we received suggested editorial changes and technical corrections to the ''Background'' and ''Unit Descriptions'' sections of the rule. These changes were recommended to improve clarity, to include additional information, and to correct a number of minor errors; they have been incorporated into this final revised rule where appropriate.

(5) In the 2007 proposed revision to critical habitat ''Criteria Used to Identify Critical Habitat'' section, we erroneously cited 100 plants per 2.5 ac (1 ha) or greater as the threshold for occupied cell inclusion in proposed critical habitat designation. Actually, occupied cells (defined in Willoughby (2005b) as 82 ft x 82 ft (25 m x 25 m) survey areas) with a plant density greater than 480 plants per 2.5 ac (1 ha) (30 plants per cell) were selected as core areas. About half of the plants observed in 2005 were in cells with a density more than or equal to 100 plants per 2.5 ac (1 ha). We used a density of 480 plants per ha since this captured the majority of the large clusters of standing plants. We believe these higher density core areas contain the physical and biological features essential to conservation of this species. Also, we erroneously reported that core areas were expanded to 2.5 ac (1 ha). Actually, we expanded the 82 ft x 82 ft (25 m x 25 m) survey cells to 5 ac (2 ha) in size to capture the entire population and seed bank on a dune bowl, based on our field observations that most occupied dune bowls are approximately two ha in size. In addition, we have made changes to the ''Criteria Used to Identify Critical Habitat'' section to more clearly articulate the supporting rationale for using the identified model to delineate the areas meeting the definition of critical habitat. Please refer to the ''Criteria Used to Identify Critical Habitat'' section of this final rule for the complete description of the GIS model used.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided

under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on discretionary Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the Federal action agency's and the applicant's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical or biological features that are essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., the primary constituent elements, as defined at 50 CFR 424.12(b)) in the appropriate quantity and spatial arrangement to support the physical or biological features essential to the conservation of the species.

Under the Act, we can designate areas outside the geographical area occupied by the species at the time it is listed as critical habitat only when we determine that those areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designations, will continue to be subject to conservation actions we and other Federal agencies implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species based on its biological needs. We consider the physical or biological features that are essential to the conservation of the species to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the PCEs for *Astragalus magdalenae* var. *peirsonii* from its biological needs as described in the proposed revised critical habitat rule published in the **Federal Register** on July 27, 2007 (72 FR 41258), and below.

Space for Individual and Population Growth, Including Sites for Germination, Reproduction, Seed Dispersal, Seed Bank, and Pollination

Astragalus magdalenae var. *peirsonii* is found on active sand dunes between active faces (so-called slip faces) of the dunes, in bowls, or on semi-stabilized shallow slopes, facing the slip-faces of active dunes (Porter *et al.* 2005, p. 14). Active sand dunes provide the space needed for individual and population growth, including sites for germination, reproduction, seed dispersal, seed bank, and pollination of *A. m.* var. *peirsonii*. Active sand dunes are characterized by bowls (hollows among the dunes), swales (low areas), and slip faces (areas so steep that the loose sand naturally cascades downward) that run transverse to the primary ridge line. *A. m.* var. *peirsonii* generally occurs on west-facing slopes where there is relative

substrate stability from the floor of the dune basin to beyond the ridge; the greatest concentrations are generally above the middle of the slope (WESTEC 1977, p. 75; Porter *et al.* 2001, pp. 12–13).

Sand movement, dune-building, and dune migration are likely determined by the wind regime (Norris and Norris 1961, p. 609). Winds from the northwest are prevalent in the winter, while in the summer the winds are from the southeast (Romspert and Burk 1979, p. 11). Muhs *et al.* (1995, pp. 43–44) found, during a study of the sand source for the Dunes, that dominant sand-moving winds are as follows: prevailing from the northwest all year at Indio, California; from the west or southwest all year at El Centro, California; and from the northwest in winter and from the southeast in summer at Yuma, Arizona. These winds are responsible for the local dispersal of seeds that either fall out of partly opened fruits or pods on the parent plant or that are released from fruits blown across the sand after falling from the parent plant (Phillips *et al.* 2001, p. 11).

Seed germination patterns likely reflect the horizontal and vertical distribution of the seed bank in the shifting sand dunes (seeds will not effectively germinate if buried more than 3 in (8 cm) below the surface of the dune (Bowers 1996, p. 69)). As an adaptation to shifting sands and low soil moisture, this species has developed extremely long taproots (Barneby 1964, p. 862) that penetrate deeply to the moister sand and that anchor the plants in the shifting dunes. According to Porter *et al.* (2005, p. 28), seedlings may have roots descending only 4 in (10 cm), whereas older plants (e.g., 4 years or older) are likely to have roots ''many meters deep.'' Seeds buried in the sand function as the seed bank and allow for growth when suitable conditions, such as adequate rainfall, scarification, and suitable sand depths, are met.

Wind-driven sand appears to provide the primary mechanism for seed scarification (e.g., scratching or chipping of outer cover). While seeds require no pre-germination treatment to induce germination, scarification appears to significantly increase germination success. Porter *et al.* (2005, p. 29) conducted germination trials of *Astragalus magdalenae* var. *peirsonii* seeds collected from the Dunes and found that, averaging over all germination trials, scarified seeds had 99.1 percent germination, whereas unscarified seeds displayed 5.3 percent germination. In germination trials conducted by Romspert and Burk (1979, pp. 45–46), 92 percent or more seeds germinated within 29 days at temperatures of 77 °F (25 °C) or less, and no seeds germinated at temperatures of 86 °F (30 °C) or higher. This observation indicates that seeds on the Dunes likely germinate in the cooler months of the year. Porter *et al.* (2005, p. 29) identified the primary dormancy mechanism in *A. m.* var. *peirsonii* as the impermeability of the seed coat to water and demonstrated little loss of viability in seeds stored for 5 years.

Seedlings may be generally present in suitable habitat throughout the Dunes, especially during above-normal precipitation years. In intervening dry years, plant numbers decrease as individuals die and are not replaced by new seedlings. Porter (*et al.* 2005, p. 35) estimated that a total- or near-total failure of seedling recruitment occurs 20 percent of the time (1 of every 5 years). This species likely depends on the production of seeds in the wetter years and the persistence of the seed bank from previous years to survive until appropriate conditions for germination reoccur.

Astragalus magdalenae var. *peirsonii* occurs only in a vegetation community referred to as psammophytic (sand-loving) scrub, characterized by *Croton wigginsii* (dunes croton), *Eriogonum deserticola* (desert buckwheat), *Helianthus niveus* ssp. *tephrodes* (Algodones Dunes sunflower), *Palafoxia arida* var. *gigantean* (giant Spanish-needle), *Pholisma sonorae* (sand food), *Tiquilia plicata* (plicate coldenia), *Petalonyx thurberi* (Thurber's sandpaper plant), and *Panicum urvilleanum* (dunes panic grass) (WESTEC 1977, p. 58; Porter *et al.* 2005, p. 14). However, none of these species truly dominates the landscape (Porter *et al.* 2005, p. 14).

In areas where the sand dunes are more stabilized (less sand dune building and movement), such as along the margins of the dune fields, the open canopy psammophytic scrub community is replaced by the sandier phases of the creosote bush scrub community. *Astragalus magdalenae* var. *peirsonii* is apparently excluded from the relatively more-closed canopy, creosote bush scrub community. The presence of this associated co-adapted psammophytic scrub plant community is important for population growth of *A. m.* var. *peirsonii,* because it provides habitat for insect pollinators required by *A. m.* var. *peirsonii* for fruit production (Porter *et al.* 2005, p. 35). The white-faced digger bee has been found to be the most frequent visitor on and may be the primary pollinator for this taxon (Porter *et al.* 2005, p. 32).

Intervening Areas for Connectivity Within the Population

The active sand dunes are continuous along the northwest-to-southeast axis. The continuity of the sand dunes provides connectivity and reduces fragmentation within the population by allowing the movement of pollinators and the wind dispersal of fruit and seeds. Therefore, areas of the sand dunes between bowls occupied by *Astragalus magdalenae* var. *peirsonii* are important for maintaining connectivity within the population.

Areas That Provide the Basic Requirements for Growth (Such as Water, Light, and Minerals)

A soil survey for the Imperial Valley area of Imperial County did not include the areas east of the Coachella Canal, but did depict a few adjacent portions of the Dunes as Rositas fine sand with 9 to 30 percent slopes (Zimmerman 1981, p. 32). Rositas fine sand is described as deep, sloping soils formed in wind-blown sands of diverse origin. Dean (1978, p. 65) describes the sand as quartz with a mean grain size of 0.006 in (0.17 mm). The Dunes sand is composed of 60 to 70 percent quartz and 30 to 40 percent feldspar (Norris and Norris 1961, p. 610). Porter *et al.* (2005, pp. 26–27) describes the sand as containing very little organic material (less than 1 percent). They also found that following rainfall, the dune surface held considerable moisture. Within 2 to 3 weeks of a rainfall event, moist sand was found 1 in (3 cm) below the dune surface, and later in the season (e.g., April) moist sand was found 7 in (19 cm) below the surface (Porter *et al.* 2005, pp. 26–27). Therefore, Rositas fine sands are required by this species to provide the basic requirements for growth.

Primary Constituent Elements for Astragalus magdalenae var. peirsonii

Within the geographical area occupied by *Astragalus magdalenae* var. *peirsonii* at the time of listing, we must identify the PCEs laid out in the quantity and spatial arrangement essential to the conservation of the species (i.e., essential physical and biological features) that may require special management considerations or protection. All areas designated as critical habitat are currently occupied, within the species' historical geographic range, and contain sufficient PCEs to support at least one life history function.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we

have determined that the PCEs for *Astragalus magdalenae* var. *peirsonii* are:

(1) West and/or northwest-facing sides of bowls, swales, and slopes consisting of Rositas fine sands within intact, active sand dune systems (defined as sand areas that are subject to sand-moving winds) in the existing range of the species that provide space needed for individual and population growth, including sites for germination, reproduction, seed dispersal, seed bank, and pollination;

(2) The associated co-adapted psammophytic scrub plant community characterized by *Croton wigginsii, Eriogonum deserticola, Helianthus niveus* ssp. *tephrodes, Palafoxia arida* var. *gigantean, Pholisma sonorae, Tiquilia plicata, Petalonyx thurberi,* and *Panicum urvilleanum* that provides habitat for insect pollinators, particularly the white-faced digger bee (*Habropoda pallida*), required for reproduction; and

(3) Areas within intact, active sand dune systems between occupied bowls, swales, and slopes that allow for pollinator movement and wind dispersal of fruit and seeds.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area occupied by the species at the time of listing contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection.

Astragalus magdalenae var. *peirsonii* was listed due to destruction of plants and modification of habitat associated with OHV activity and associated recreational development (63 FR 53596; October 6, 1998). OHVs can impact habitat for *A. m.* var. *peirsonii* by:

(1) Disrupting the natural processes that support dune formation, movement, and structure, could disrupt the available habitat needed for individual and population growth;

(2) Causing the collapse of dune faces and ridges, which could result in burial of the seed bank;

(3) Disturbing surface sand, thereby decreasing soil moisture needed for establishment of individual plants and population growth; and

(4) Degrading the psammophytic scrub plant community that provides habitat for pollinators required for reproduction.

In the 2004 final critical habitat rule, we stated that OHVs may also increase sand compaction (69 FR 47330). However, Porter *et al.* (2005, p. 27) measured soil compaction associated with undisturbed dunes, OHV-traversed sand dunes, and dunes disturbed by foot traffic, and found that soil compaction on the undisturbed dunes was significantly higher. They state that winds and rains cause the sand grains on the surface of the dune to sort and pack in undisturbed areas, thereby potentially reducing evaporative water loss from the dunes. They theorize that OHV activity or walking disturbs the surface and may result in increased evaporative water loss in the dunes (Porter *et al.* 2005, p. 27).

Special management considerations or protection may be required to minimize impacts to *Astragalus magdalenae* var. *peirsonii* habitat resulting from OHV recreation. The BLM (2003, Appendix 1, p. 13) listed the following possible management options to protect *A. m.* var. *peirsonii* and its habitat: (1) Use restrictions based on a permit system that would allow a specified level of use (high, medium, low, no use); (2) temporally based closures or limitations (open during some months or years, closed in others); (3) recognition and management of certain areas within a management area; and/or (4) increased education and outreach to OHV users to avoid certain areas. Special management considerations or protection needed may also include additional enforcement to ensure visitor compliance with these management options.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining areas that contain the physical and biological features essential to the conservation of species. We consider BLM's 2005 (Willoughby 2005b) survey data to be the best available information on the distribution and range of *Astragalus magdalenae* var. *peirsonii* on the Dunes. An exceptional amount of rainfall was recorded during the 2004 to 2005 growing season, resulting in the highest recorded abundance of the species to date, with an estimated 1,831,076 plants in the Dunes (Willoughby 2005b, pp. 9–11). This rainfall event coincided with the start of BLM's revised survey methodology, which consisted of a more detailed survey approach and covered a larger portion of the Dunes (Willoughby 2005a, pp. 1–5). The 2005 survey contained 123,488 sample plots covering an effective area of 53,000 acres. Because these surveys occurred under the best possible growth and germination conditions for the plant and covered the largest area and greatest number of sample point locations, we relied on BLM's raw 2005 survey data as the basis for our criteria and GIS model to delineate critical habitat for *A. m.* var. *peirsonii*. As stated in the final listing rule (63 FR 53596), the Dunes was, and continues to be, the only area in the United States known to be occupied by *A. m.* var. *peirsonii*.

Astragalus magdalenae var. *peirsonii* is a short-lived perennial that is likely dependent upon the maintenance of a large seed bank to ensure long-term viability within its dunes ecosystem. We believe the long-term conservation of *A. m.* var. *peirsonii* is dependent upon conservation of those areas supporting the largest areas of high quality habitat that contain large numbers of standing plants, and that are close enough to other similar areas to allow for necessary dispersal and gene flow. Such areas are most likely to support and maintain relatively large seed banks. We consider such areas to represent the essential core population areas for *A. m.* var. *peirsonii*, and are the areas most likely to contribute to the recovery of the species.As also discussed in the Summary of Changes from the Previously Designated Critical Habitat and 2007 Proposed Revised Rule section above, we obviously did not have BLM's 2005 (Willoughby 2005b) survey data on the distribution and range of *Astragalus magdalenae* var. *peirsonii* on the Dunes when we proposed critical habitat in 2003. Instead, we developed a model based on four variables depicted on GIS-based maps for determining which areas of the Dunes are essential for the conservation of the species. Aside from using less rigorous distributional data (34 versus 510 transects) collected by the BLM from 1998 to 2002 from poorer rainfall years, we also employed the presence and absence of four other rare psammophytic scrub taxa that occur in the Dunes as a model variable. As a result, the model used for the 2003 proposed critical habitat rule included nearly all areas of occupancy of *A. m.* var. *peirsonii* and overestimated the areas that meet the definition of critical habitat. Using the raw data collected by BLM during 2005, we were able to more precisely identify the core population areas we consider essential to the conservation of *A. m.* var. *peirsonii*.

We delineated the final revised critical habitat boundaries using the following criteria and GIS model:

(1) We selected occupied cells (defined in Willoughby (2005b) as 82 ft x 82 ft (25 m x 25 m) survey areas) with a plant density greater than 480 plants

per 2.5 ac (1 ha) (30 plants per cell) as core areas. We used a density of 480 plants per 2.5 ac (1 ha) because this captured the majority of the large clusters of standing plants. As stated above, we believe these higher density core areas contain a larger extent of high quality habitat (*e.g.*, suitable dune morphology and soil moisture). Also, because these core areas contain higher numbers of standing plants in proximity to each other, we believe that these areas likely support relatively large seed banks (a greater number of seeds being contributed by a greater number of standing plants). Therefore, because these core areas contain a larger extent of high-quality habitat and larger seed banks, we determined that these areas support the physical and biological features essential to the conservation of *Astragalus magdalenae* var. *peirsonii*, and are the areas most likely to contribute to the recovery of the species.

(2) We expanded each core area to 5 ac (2 ha) and then merged 5 ac (2 ha) core areas within 328.08 ft (100 m) distances of each other to form aggregated core areas. We expanded core areas to 5 ac (2 ha) to capture the entire population and seed bank in a dune bowl, based on our field observations that most occupied dune bowls are approximately 5 ac (2 ha) in size. We aggregated the 5 ac (2 ha) core areas within 328.08 ft (100 m) of each other to maintain space for wind dispersal of seeds between occupied dune bowls. This 328.08 ft (100 m) distance is a Dunes-wide approximation of the average distance between aggregated core areas.

(3) We then eliminated outlying or remote core areas greater than 1,312 ft (400 m) (4 bowls) from adjacent core areas and core areas less than 1,312 ft (400 m) away but with a plant density less than approximately 370 plants (= 0.0005 of the total observed population of 739,805 plants) within the aggregated core area. This step allowed us to remove core areas with low numbers of plants considered not essential to the conservation of the species. Because these areas are a greater distance from aggregated core areas and/or contain relatively fewer standing plants, we believe these areas either contain a smaller extent of high-quality habitat (e.g., suitable dune morphology and soil moisture) and/or support relatively small seed banks.

(4) We then overlaid a 1,076-ft^2 (100-m^2) grid onto the final core areas to describe the boundaries of the critical habitat. We removed remaining small polygons less than 1,312 ft (400 m) from the core habitat in which the plant density was low. Since these polygons contained a low number of standing plants, we believe these areas contain a smaller extent of high-quality habitat (e.g., suitable dune morphology, soil moisture) and/or support relatively small seed banks.

This methodology captured approximately 92 percent of the 2005 observed population and includes areas that contain high-density core populations, the majority of high-quality habitat, and a large seed bank. These areas support the physical and biological features we have determined are essential to the conservation of the species.

When determining critical habitat boundaries within this final revised rule, we made every effort to avoid developed areas, such as lands covered by buildings, pavement, and other structures, because such lands lack PCEs for *Astragalus magdalenae* var. *peirsonii*. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final revised rule are excluded by text in the final revised rule. Therefore, a Federal action involving these lands would not trigger consultation under section 7 of the Act with respect to critical habitat and the requirements of no adverse modification, unless the specific action may affect adjacent critical habitat.

Revised Critical Habitat Designation

We are designating approximately 12,105 ac (4,899 ha) as revised critical habitat for *Astragalus magdalenae* var. *peirsonii* within 3 units. Table 3 outlines the areas included and the areas excluded from this final revised critical habitat by land ownership. Subunits designated as critical habitat are discussed in detail below in the ''Unit Descriptions'' section. These units generally correspond to those units in the 2004 designation (see Table 3). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *A. m.* var. *peirsonii*. Table 4 shows the occupied units.

TABLE 3.—REVISED CRITICAL HABITAT UNITS AND SUBUNITS FOR ASTRAGALUS MAGDALENAE VAR. PEIRSONII DEPICTING THE AREA DESIGNATED BY SUBUNIT OF CRITICAL HABITAT AND AREAS EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION, BY LAND OWNERSHIP

[Numbers have been rounded to the nearest whole digit and may overestimate area due to rounding.]

Critical habitat unit	Critical habitat subunit	Land ownership[1]	Total area proposed (ac (ha))	Total area excluded (ac (ha))	Total area designated (ac (ha))
Unit 1—Mammoth Wash/North Algodones Dunes Wilderness			4,675 (1,892)	0	4,675 (1,892)
	Subunit 1A	BLM	203 (82)	0	203 (82)
		Private	218 (88)	0	218 (88)
	Subunit 1B	BLM	1,389 (562)	0	1,389 (562)
		Private	22 (9)	0	22 (9)
	Subunit 1C	BLM	730 (296)	0	730 (296)
		State	11 (4)	0	11 (4)
	Subunit 1D	BLM	2,103 (851)	0	2,103 (851)
Unit 2—Gecko/Glamis			4,003 (1,620)	4,003 (1,620)	0
	Subunit 2A	BLM	2,716 (1,099)	2,716 (1,099)	0
	Subunit 2B	BLM	1,287 (521)	1,287 (521)	0
Unit 3—Adaptive Management Area/Ogilby			7,212 (2,919)	0	7,212 (2,919)
	Subunit 3A	BLM	4,487 (1,816)	0	4,487 (1,816)

TABLE 3.—REVISED CRITICAL HABITAT UNITS AND SUBUNITS FOR ASTRAGALUS MAGDALENAE VAR. PEIRSONII DEPICTING THE AREA DESIGNATED BY SUBUNIT OF CRITICAL HABITAT AND AREAS EXCLUDED FROM THE CRITICAL HABITAT DESIGNATION, BY LAND OWNERSHIP—Continued

[Numbers have been rounded to the nearest whole digit and may overestimate area due to rounding.]

Critical habitat unit	Critical habitat subunit	Land ownership[1]	Total area proposed (ac (ha))	Total area excluded (ac (ha))	Total area designated (ac (ha))
	Subunit 3B	BLM	1,176 (476)	0	1,176 (476)
	Subunit 3C	BLM	1,549 (627)	0	1,549 (627)
Unit 4—Buttercup		BLM	218 (88)	0	218 (88)
Total			16,108 (6,519)	4,003 (1,620)	12,105 (4,899)

[1] BLM = Bureau of Land Management; State = California State Lands Commission.

TABLE 4.—OCCUPANCY OF ASTRAGALUS MAGDALENAE VAR. PEIRSONII BY REVISED CRITICAL HABITAT UNITS

Critical habitat unit	Occupied at time of listing?	Currently occupied?	Size of unit in acres (hectares)
Unit 1—Mammoth Wash/North Algodones Dunes Wilderness			
Subunit 1A	Yes	Yes	421 (170)
Subunit 1B	Yes	Yes	1,411 (571)
Subunit 1C	Yes	Yes	741 (300)
Subunit 1D	Yes	Yes	2,103 (851)
Unit 2—Gecko/Glamis			
Subunit 2A	Yes	Yes	2,716 (1,099)
Subunit 2B	Yes	Yes	1,287 (521)
Unit 3—Adaptive Management Area/Ogilby			
Subunit 3A	Yes	Yes	4,487 (1,816)
Subunit 3B	Yes	Yes	1,176 (476)
Subunit 3C	Yes	Yes	1,549 (627)
Unit 4—Buttercup	Yes	Yes	218 (88)

Unit Descriptions

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for *Astragalus magdalenae* var. *peirsonii* below.

Unit 1: Mammoth Wash/North Algodones Dunes Wilderness

Unit 1 consists of 4,675 ac (1,892 ha) of land, further divided into 4 subunits (1A, 1B, 1C, 1D), the majority of which is primarily Federal land under BLM management (Table 3). This unit includes land in the BLM's Mammoth Wash and North Algodones Dunes Wilderness Management Areas.

Subunits 1A (421 ac (170 ha)) and 1B (1,411 ac (571 ha))

Subunits 1A and 1B are in the Mammoth Wash area. About half of the land in Subunit 1A is under BLM ownership, and the other half is under private ownership (Table 3). The majority of the land in Subunit 1B is managed by the BLM (Table 3). Both subunits were occupied at the time of listing, are currently occupied, and contain the physical and biological features essential to the conservation of the species. Habitat in Subunits 1A and 1B supports the largest numbers of *Astragalus magdalenae* var. *peirsonii* in the Mammoth Wash Management Area, with approximately 8,002 plants observed in Subunit 1A and 24,623 plants observed in Subunit 1B (based on our calculations using BLM's 2005 raw survey data). In addition to supporting the PCEs (1, 2, and 3) for the species, habitat within these subunits contains a higher density of standing plants than adjacent areas and likely supports a large seed bank based on our analysis of BLM's 2005 survey data.

The Mammoth Wash Management Area is used for camping, hunting, rights of way, motion picture/television filming, and OHV recreation (BLM 2003, p. 67). The majority of Subunit 1B is within an interim closure area that is temporarily closed to OHV activity. Because the area outside of the interim closure area is remote and difficult to access, OHV recreationists give it relatively light visitation on holiday weekends and minimal visitation during the week (BLM 2003, p. 67). This management area had the lowest average annual visitation (approximately 80 vehicles) of all management areas open for OHV use during the 2003–2004, 2004–2005, and 2005–2006 seasons (BLM 2006).

The essential features found in Subunit 1A may require special management considerations or protection, such as use restrictions and/or additional enforcement to minimize impacts associated with OHV use and associated recreational activity. The majority of the habitat in Subunit 1B is now being managed by the BLM to minimize impacts associated with OHV use through an interim closure of the area. However, regardless of the future status of this interim closure area, the essential features found in this subunit may require special management considerations or protection, such as OHV-use restrictions and/or additional enforcement in the future to minimize impacts associated with OHV recreation

(see ''Special Management Considerations or Protection'' section).

Subunits 1C (741 ac (300 ha)) and 1D (2,103 ac (851 ha))

The majority of land in Subunit 1C and all of the land in Subunit 1D is Federal land managed by the BLM (Table 3). Both subunits were occupied at the time of listing, are currently occupied, and contain the physical and biological features essential to the conservation of the species. Habitat in Subunits 1C and 1D retains the most natural and pristine features of the Dunes ecosystem, and includes the best remaining example of a dune system undisturbed by intensive OHV recreation in the ISDRA. These areas also support the largest numbers of *Astragalus magdalenae* var. *peirsonii* in the North Algodones Dunes Wilderness Management Area, with approximately 15,519 plants observed in Subunit 1C and 42,673 plants observed in Subunit 1D (based on our calculations using BLM's 2005 raw survey data). In addition to supporting the PCEs (1, 2, and 3) for the species, habitat within these subunits contains a higher density of standing plants than adjacent areas and likely supports a large seed bank based on our analysis of BLM's 2005 survey data.

The North Algodones Dunes Wilderness Management Area is a 32,000 ac (12,955 ha) area that was designated as a wilderness area in 1994 to protect a number of rare and endemic plant and animal species, including *Astragalus magdalenae* var. *peirsonii*. Activities in this area include photographic activities, sightseeing, walking, hiking, backpacking, camping, nature study, horseback riding, hunting, rights-of-way, and wildlife viewing (BLM 2003, p. 71). No recreational use of mechanized vehicles of any kind (OHVs, motorcycles, bicycles, hang gliders, motorized equipment, or motorboats) is allowed in the wilderness area; management takes the form of ''minimal and subtle on-site controls and restrictions'' (BLM 2003). However, people occasionally trespass with motorized vehicles, and the BLM acknowledges that the amount of motorized trespasses in this area should be reduced (BLM 2003, p. 71).

The essential features found in both subunits may require special management considerations or protection; such as additional enforcement to minimize impacts associated with unauthorized trespass by motorized vehicles (see ''Special Management Considerations or Protection'' section).

Unit 2: Gecko/Glamis

Unit 2 consists of 4,003 ac (1,620 ha) of land further divided into 2 Subunits (2A and 2B), which are Federal lands managed by the BLM (Table 3). This unit includes lands in the BLM's Gecko and Glamis Management Areas, with the majority being in the Gecko Management Area. We are excluding Unit 2 based upon the disproportionately high impacts (both monetary and otherwise) of including this unit relative to the other units in this final revised designation, as discussed below in ''Areas Excluded Under Section 4(b)(2) of the Act.''

Unit 3: Adaptive Management Area (AMA)/Ogilby

Unit 3 consists of 7,212 ac (2,919 ha) of land further divided into 3 subunits (3A, 3B, 3C), which are Federal lands under BLM management (Table 3). This unit includes lands in the BLM's AMA and Ogilby Management Areas.

Subunits 3A (4,487 ac (1,816 ha)), 3B (1,176 ac (476 ha)), and 3C (1,549 ac (627 ha))

All three subunits were occupied at the time of listing, are currently occupied, and contain the physical and biological features essential to the conservation of the species. Habitat in Subunits 3A, 3B, and 3C represents the largest, widest, and highest sand dune fields within the Dunes and supports the largest numbers of *Astragalus magdalenae* var. *peirsonii* Dunes-wide, with approximately 200,021 plants observed in Subunit 3A; 178,837 plants observed in Subunit 3B; and 125,526 plants observed in Subunit 3C (based on our calculations using BLM's 2005 raw survey data). In addition to supporting the PCEs (1, 2, and 3) for the species, habitat within these subunits contains a higher density of standing plants than adjacent areas and likely supports a large seed bank based on our analysis of BLM's 2005 survey data.

All of Subunit 3A and about half of Subunit 3B are in the BLM's AMA. The other half of Subunit 3B and all of Subunit 3C are in the Ogilby Management Area. The AMA is intended primarily for OHV recreation, although there is also rights-of-way use (BLM 2003, p. 84). However, the entire AMA, including all of Subunit 3A and most of Subunit 3B, is within an interim closure area, temporarily closed to OHV activity. The Ogilby Management Area is used for camping, OHV recreation, and rights-of-way (BLM 2003, p. 90). A portion of the Ogilby Management Area, including a small portion of Subunit 3C, is within an interim closure area, temporarily closed to OHV activity. Areas of the Ogilby Management Area open to OHV use had average annual visitation of approximately 12,951 vehicles during the 2003–2004, 2004–2005, and 2005–2006 seasons (BLM 2006).

The essential features found in Subunit 3C not within the interim closure area may require special management considerations or protection such as use restrictions and/or additional enforcement to minimize impacts associated with OHV recreation. Habitat in Subunits 3A and 3B, and a small portion of Subunit 3C, are currently being managed by the BLM to minimize impacts associated with OHV use through an interim closure of the area. However, regardless of the future status of this interim closure area, the essential features found in these subunits may require special management considerations or protection such as OHV-use restrictions and/or additional enforcement in the future to minimize impacts associated with OHV recreation (see ''Special Management Considerations or Protection'' section).

Unit 4: Buttercup

Unit 4 consists of 218 ac (88 ha) of Federal land entirely under BLM management (Table 3). This unit includes lands in the BLM's Buttercup Management Area. This unit was occupied at the time of listing, is currently occupied, and contains the physical and biological features essential to the conservation of the species. Habitat in Unit 4 supports the largest number of *Astragalus magdalenae* var. *peirsonii* in the Buttercup Management Area, with approximately 30,011 plants observed (based on our calculations using BLM's 2005 raw survey data). In addition to supporting the PCEs (1, 2, and 3) for the species, habitat within these subunits contains a higher density of standing plants than adjacent areas and likely supports a large seed bank based on our analysis of BLM's 2005 survey data.

This area is used for camping, OHV recreation, sight-seeing, commercial vending, education, filming, and rights of way (BLM 2003, p. 97). The Buttercup Management Area had the second highest average annual visitation (approximately 78,629 vehicles) of the management areas open for OHV use during the 2003–2004, 2004–2005, and 2005–2006 seasons (BLM 2006). Due to its proximity to Mexico, United States-Mexico international border issues (e.g., illegal border crossings and smuggling of goods and contraband) also exist in this management area resulting in

frequent patrol by the U.S. Border Patrol (BLM 2003, p. 97). The essential features found in Unit 4 may require special management considerations or protection such as use restrictions and/or additional enforcement to minimize impacts associated with intensive OHV activity (see ''Special Management Considerations or Protection'' section).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Astragalus magdalenae* var. *peirsonii* or its designated critical habitat will require section 7(a)(2) consultation under the Act. Activities on State, Tribal, local or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions that may be subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the essential features to an extent that appreciably reduces the conservation value of critical habitat for *Astragalus magdalenae* var. *peirsonii*. Generally, the conservation role of *A. m.* var. *peirsonii* critical habitat units is to support viable core area populations.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for *Astragalus magdalenae* var. *peirsonii* include, but are not limited to, activities that disrupt the natural processes that support dune formation, movement, and structure; or otherwise change the morphology of the dunes (e.g., ridges, slip faces, bowls, swales); and activities that degrade or diminish psammophytic scrub, including activities that (a) Disturb the sand such that soil moisture is lost resulting in decreased seed germination or desiccation of plants resulting in premature death, or (b) bury or expose seeds resulting in decreased seed germination; or (c) physically impact or dislodge plants resulting in premature death such as (please see the ''Special Management Considerations or Protection'' section for a more detailed discussion on the impacts of these actions to *A. m.* var. *peirsonii):*

(1) Development of the Recreational Area Management Plan for the Imperial Sand Dunes Recreation Area by the BLM;

(2) Issuance of permits for private actions (*e.g.* filming) on Federal lands within the Dunes by the BLM;

(3) Modifications to the All American Canal in the Dunes vicinity by the Bureau of Reclamation;

(4) Construction and maintenance of facilities by the U.S. Border Patrol; and

(5) Other monitoring and enforcement activities of the U.S. Border Patrol involving vehicular operations on the Dunes.

We consider all of the revised critical habitat units to contain the physical and biological features essential to the conservation of *Astragalus magdalenae* var. *peirsonii*. All units are within the geographic range of this taxon and all were occupied by the species at the time of listing. Federal agencies already consult with us on activities in areas currently occupied by *A. m.* var. *peirsonii*, or if the species or its

designated critical habitat may be affected by the action, to ensure that their actions do not jeopardize the continued existence of *A. m.* var. *peirsonii* or destroy or adversely modify its designated critical habitat.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate or revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

In the following sections, we address a number of general issues that are relevant to the exclusions we considered. In addition, the Service has conducted an economic analysis of the impacts of the proposed revision to designated critical habitat and related factors (referred to here as the DEA). The DEA was made available for public review and comment from July 27, 2007, to September 25, 2007 (72 FR 41258). Substantive comments and information received on the DEA are summarized above in the ''Summary of Comments and Recommendations'' section and have been incorporated into the final analysis, as appropriate. Based on public comment on the DEA, the proposed revision to critical habitat, and the information in this final revised designation of critical habitat and the final economic analysis, we have excluded areas from the revised critical habitat under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in our implementing regulations at 50 CFR 424.19.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands within the geographical area occupied by the species at the time of listing on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if protected or managed appropriately, could provide for the survival and recovery of the species.

The identification of those areas that are essential for the conservation of the species or contain essential features and can, if protected or managed appropriately, provide for the recovery of a species is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical or biological features essential to the conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential for the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on discretionary actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on discretionary actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects on habitat will often result in effects on the species. However, the regulatory standard is different: the jeopardy analysis looks at the action's impact on survival and recovery of the species, while the adverse modification analysis looks at the action's effects on the designated habitat's contribution to the species' conservation. This will, in many instances, lead to different results and different regulatory requirements.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential for the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require property owners to undertake affirmative actions to promote the recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when we concur in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then we would initiate formal consultation, which would conclude when we issue a biological opinion on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to essential features, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat. Conversely,

voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat, therefore implementing recovery actions. We believe that in many instances the benefit to a species or its habitat realized through the designation of critical habitat is low when compared to the conservation benefit that can be achieved through voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving consideration of critical habitat. Management plans may commit resources to implement long-term management and protection to particular habitat for at least one and possibly additional listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project only, and not to providing conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that considers enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the particular species. In general, critical habitat designation always has educational benefits; however, in some cases, they may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Economics

Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

In making the following exclusions, we have considered in general that all of the costs and other impacts predicted in the economic analysis might not be avoided by this exclusion. This is because all of the areas in question are currently occupied by *Astragalus magdalenae* var. *peirsonii* and there will be requirements for consultation under section 7 of the Act; in addition, other protections for the species exist elsewhere in the Act and under State and local laws and regulations.

Concurrent with the publication of the proposed revised critical habitat designation, we announced the availability of an economic analysis to estimate the potential economic effect of the revised designation. The draft economic analysis was made available for public review on July 27, 2007 (72 FR 41258). We accepted comments on the draft analysis until September 25, 2007.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the revised designation of critical habitat for *Astragalus magdalenae* var. *peirsonii.* The information regarding the incremental impacts of the critical habitat designation is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the revised designation outweigh the benefits of including those areas in the revised designation.

The current analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis, as they are considered to be part of the regulatory and policy baseline.

The economic analysis considers the potential economic effects of actions relating to the conservation of *Astragalus magdalenae* var. *peirsonii,* including costs associated with sections 4, 7, and 10 of the Act, and identifies the incremental impacts attributable solely to the designation of critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *A. m.* var. *peirsonii* in areas containing the physical and biological features essential to the conservation of the species. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential impacts of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date *Astragalus magdalenae* var. *peirsonii* was listed as threatened (October 6, 1998; 63 FR 53596), and considers those costs that may occur in the 20 years following a designation of critical habitat.

Based on public comments received and new information, we developed a final economic analysis of the potential incremental economic effects of the revised designation. The total potential post-designation efficiency impacts for the timeframe 2008–2027 range from a lower bound of zero to an upper bound range of $116–$127 million in undiscounted dollars ($5.80 million to $6.33 million annualized). Discounted future costs are estimated to be $85.8 million to $93.3 million ($5.77 million to $6.27 million annualized) at a 3 percent discount rate, or $60.6 million to $65.7 million ($5.72 million to $6.20 million annualized) at a 7 percent discount rate. Most of the impact results from the potential closure of designated critical habitat areas from recreational OHV use. The critical habitat unit with the greatest potential impacts is Unit 2; impacts in this unit constitute about 93 percent of potential efficiency effects. These costs are attributable to loss of revenue generated by businesses supporting the OHV community as a direct result of the designation of critical habitat.

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES**), or by

download from the Internet at *http://www.fws.gov/carlsbad*.

Areas Excluded Under Section 4(b)(2) of the Act—Unit 2 (Subunits 2A and 2B)

The revised FEA estimates the potential incremental efficiency effects associated with the designation and the potential incremental regional economic impacts. The primary assumption applied in the economic analysis is that the designation of critical habitat for *Astragalus magdalenae* var. *peirsonii* may result in the closure of portions of the critical habitat. This assumption is based on the likely management actions that could result from the critical habitat designation due to our expected interpretation of adverse modification standards in future consultations with BLM, as well as the past behavior of BLM in closing areas to protect the listed plant. The economic analysis presents two scenarios that bound the potential economic impacts. At the lower bound, the analysis assumes that visitation levels are not affected by closures of portions of the ISDRA to OHV use. Specifically, the lower bound scenario allows for various potential outcomes, including the possibility that BLM chooses a management action other than closure of areas or that OHV recreators substitute to other areas without a loss in consumer surplus or a change in spending patterns. The upper bound scenario reflects the assumption that, while overall growth in visitation to the ISDRA will continue, some that would have made a trip to the ISDRA for OHV recreation will choose not to due to the closure of portions of the designated critical habitat.

At the lower bound, incremental economic efficiency effects are not expected. The present value of upper bound, estimated potential economic efficiency effects ranges from $60.6 million to $65.7 million using a 7 percent discount rate ($5.72 million to $6.20 million annualized) over the next 20 years ($116 million to $127 million in undiscounted dollars). The range reflects uncertainties in the assumed growth in visitation. For the regional economic impacts, no incremental impacts are forecast at the lower bound. At the upper bound, potential reductions in OHV use at the ISDRA resulting from critical habitat could result in regional economic impacts of $15.8 million to $34.0 million in total output and a potential reduction of 345 to 743 jobs, depending on assumed growth in visitation and levels of recreator expenditures. The FEA notes that the measures of potential regional economic impacts included in the report are fundamentally different than the reported potential efficiency effects, and thus cannot be added to or compared with estimates of changes in economic efficiency.

The potential OHV use welfare impacts (the potential efficiency impacts minus the potential administrative and project modification costs) associated with critical habitat Unit 2 (Subunits 2A and 2B) ranges between zero and $113 million and accounts for approximately 93 percent of the potential economic impacts.

In addition to economic impacts quantified in the FEA, designating critical habitat in the Dunes area is likely to result in a number of costs for which we were not able calculate dollar amounts; for example, the cost of lost recreational opportunities, and decreased quality of recreation in areas not affected by potential closures. These costs could potentially be incurred in any of the proposed critical habitat units, but for reasons discussed in more detail below, we believe the benefits of including Unit 2 in the critical habitat designation are far outweighed by these costs. Thus, after weighing the benefits of including versus the benefits of excluding Unit 2, which includes both the Gecko and Glamis Management Areas, we are excluding Unit 2 from the final critical habitat designation for *Astragalus magdalenae* var. *peirsonii* under section 4(b)(2) of the Act.

A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

Additional Benefits of Inclusion

In addition to the general benefits of designating critical habitat outlined above in ''Benefits of Designating Critical Habitat,'' the added protection the species and its critical habitat will receive under section 7(a)(2) of the Act is the primary benefit of including Unit 2 (Subunits 2A and 2B) in the final critical habitat designation for *Astragalus magdalenae* var. *peirsonii*. Unit 2 is located entirely within Federal lands managed by the BLM. Section 7(a)(2) of the Act requires Federal agencies to consult on any action authorized, funded, or carried out by such agency to insure that the action will not jeopardize a listed species or destroy or adversely modify its critical habitat. Therefore, because virtually all actions on Federal land will have a Federal nexus, the benefit of consultation under section 7(a)(2) of the Act is greatest on Federal lands such as the lands in Unit 2, when the biological factors are otherwise comparable on non-Federal lands.

The management implications of a designation of critical habitat for this unit range from no change to full closure. Whether critical habitat designation will result in closures of portions of the ISDRA is dependent on future management decisions of the BLM and the outcome of the section 7 consultation on BLM's Imperial Sand Dunes Recreation Area Management Plan; however the inclusion of this unit in the critical habitat designation significantly increases the possibility that a primary management objective of the unit will be *A. m.* var. *peirsonii* recovery.

It is important to note, however, that even in the absence of a critical habitat designation, Unit 2 will not be subject to development, or any other impact that is expected to permanently destroy *Astragalus magdalenae* var. *peirsonii* habitat; the main impact in this area has been and will be OHV use, and *A. m.* var. *peirsonii* has persisted over time in Unit 2 despite consistent OHV use in the area. While OHV use has been shown to potentially cause density reduction in *A. m.* var. *peirsonii* (Groom *et al.* 2007; USFWS 2007), *A. m.* var. *peirsonii* can continue to persevere at reduced density levels. Including Unit 2 in the critical habitat designation would be expected to benefit the species and contribute to the species' conservation by likely reducing OHV impacts within the unit. However, exclusion of Unit 2 would not result in the extirpation of *A. m.* var. *peirsonii* in the area, and plants could persist at sufficient densities to contribute to genetic diversity and maintain gene flow between adjacent units to the northwest and southeast. Thus, the area would still be expected to contribute to the overall conservation of the species.

Benefits of Exclusion

We have identified two major benefits to excluding Unit 2 from the final *Astragalus magdalenae* var. *peirsonii* critical habitat designation: (1) Virtually eliminating the potential economic impacts estimated in the FEA and (2) minimizing the impact to the significant social benefits derived from recreating in the area.

The present value upper bound efficiency impacts to OHV recreation estimated in the FEA range from $81.4 million to $89.0 million using a 3 percent discount rate ($113 million to $121 million in undiscounted dollars). Upper bound regional economic impacts range from $15.8 million to $34.0 million in total output and 345 to 743 jobs. In addition, the present value upper bound project modifications are forecast to total $3.11 million using a 7

percent discount rate ($5.88 million in undiscounted dollars) over 20 years. This includes the cost to BLM to install and maintain signage and enforce the potential closure of portions of critical habitat in the ISDRA. Excluding Unit 2 will potentially reduce virtually all of the economic impacts estimated by the final FEA.

Section 102(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, the law which defines and details the mission of the BLM, states, ''The Congress declares that it is the policy of the United States that—(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.'' The BLM is thereby charged with managing the federal lands under its purview in a manner that advances each of the above uses as appropriate. Thus, in developing and implementing its Recreation Area Management Plan for the ISDRA, BLM must balance the responsibility to provide protection for ecological resources, such as *Astragalus magdalenae* var. *peirsonii* and its habitat, with its mission to provide recreational opportunities, such as OHV use.

The ISDRA comprises the largest mass of sand dunes in the state of California, and is recognized as a world-class OHV recreational area because of the exceptional OHV recreational opportunities it presents (BLM 1987). The ISDRA does support other recreational activities, such as hiking and horseback riding, but OHV use is by far the most prevalent recreational activity taking place in the active dunes of the ISDRA. The ISDRA provides a unique recreation opportunity for those who participate in OHV activities, and there are significant social benefits to excluding Unit 2 from the final critical habitat designation. Numerous members of the public and groups representing thousands of OHV users submitted comments during the comment period for the proposed revised critical habitat rule and the DEA expressing how highly they value recreating in the Gecko and Glamis Management Areas (which include Unit 2). For example, the American Sand Association, a non-profit organization representing approximately 30,500 members, stated in its comments on the proposed revised critical habitat rule and the DEA that if OHV users could not reach preferred recreational areas from the camping areas along Gecko road, their incentive to visit the ISDRA at all will be greatly diminished. Other commenters stated that if engaging in OHV recreation at the Dunes were to become infeasible, it would result in lost opportunities to enjoy an activity they consider a tradition with family and friends. This area is by far the most heavily used by visitors to the ISDRA; an estimated 400,474 people visited the area during the 2006 fiscal year, while an estimated 275,202 people visited the next most heavily used area (Buttercup) (BLM, 2006a). OHV users camp in the campgrounds along Gecko Road and use the nearby staging areas to prepare for OHV recreation in the dunes to the east. If Unit 2 is included in the designation and the area is subsequently closed to OHV use, such a management response by BLM would likely result in the access to these dunes being cut off along roughly 75 percent of the length of Gecko Management Area. As stated above, such a closure would likely reduce the number of trips OHV recreators make to the dunes annually, or cause individuals to stop visiting altogether, resulting in lost opportunities to enjoy an activity they consider a tradition with family and friends. Although we were not able to quantify this cost in the FEA, we are aware that closure of Unit 2 to OHV use would constitute a significant loss to those who regularly recreate there.

Thus, we believe the recreational benefits offered by the ISDRA is an ''other relevant impact'' which is most appropriate to be considered when making decisions that will affect accessibility of the Dunes to OHV recreators. While special consideration of a particular recreational land use may not be appropriate in most areas where habitat and species preservation and recovery are an issue, we believe that that the ISDRA presents a situation where impacts to recreation in the area should be given significant weight in our balancing analysis under section 4(b)(2) of the Act.

Benefits of Exclusion Outweigh Benefits of Inclusion

The primary benefits of including Unit 2 are related to the likely greater level of conservation management of *Astragalus magdalenae* var. *peirsonii* in the unit due to the regulatory implications of critical habitat, and the contribution of that management towards species recovery. Although *A. m.* var. *peirsonii* would not receive the full conservation benefit that could be achieved by the inclusion of Unit 2 in the critical habitat designation, we still expect this area to contribute to the genetic diversity, gene flow between adjacent units to the northwest and southeast, and the overall conservation of the species. In contrast, the inclusion of Unit 2 in the critical habitat designation would likely result in disproportionately high economic and significant social impacts in this area relative to the impacts of the overall critical habitat designation. Unit 2 contains approximately 8.5 percent of the total observed occurrences of *A. m.* var. *peirsonii* within the proposed revised critical habitat, while over 90 percent of the potential incremental economic costs associated with the proposed revised critical habitat designation, and the majority of the unquantifiable impacts associated with the proposal, are attributed to Unit 2.

Therefore, based on the above discussions, we have determined that the benefits of excluding Unit 2 (Subunits 2A and 2B) from this critical habitat designation outweigh the benefits of including the unit. Unit 2 will still be subject to all other provisions of the Act, including the requirement that no Federal actions jeopardize the continued existence of the species.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of the lands in Unit 2 will not result in the extinction of *Astragalus magdalenae* var. *peirsonii* for several reasons: The area excluded encompasses approximately 8.5 percent of the total observed population within the proposed revised critical habitat boundaries and approximately 7.8 percent of the total observed population in the Dunes; the species still occupies Unit 2 despite the OHV activity in portions of the area; and, because Unit 2 is occupied by *A. m.* var. *peirsonii*, BLM must consult with us under section 7(a)(2) of the Act, on its actions occurring within Unit 2 (including resource management) that may affect the species, to insure that such actions will not jeopardize the continued existence of the species.

Required Determinations

Regulatory Planning and Review

In accordance with E.O. 12866, we evaluate four parameters in determining whether a rule is significant. The four parameters that would result in a designation of significant under E.O. 12866 are:

(a) The rule would have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) The rule would create inconsistencies with other Federal agencies' actions.

(c) The rule would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) The rule would raise novel legal or policy issues.

If OMB requests to informally review a rule designating critical habitat for a species, we consider that rule to raise novel legal and policy issues. Because no other Federal agencies designate critical habitat, the designation of critical habitat will not create inconsistencies with other agencies' actions. We use the economic analysis of the critical habitat designation to evaluate the potential effects related to the other parameters of E.O. 12866 and to make a determination as to whether the regulation may be significant under parameter (a) or (c) listed above.

Based on the economic analysis of the critical habitat designation, we have determined that the revised designation of critical habitat for *Astragalus magdalenae* var. *peirsonii* will not result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Based on previous critical habitat designations and the economic analysis, we believe this rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. OMB has requested to informally review this rule, and thus this action may raise novel legal or policy issues. In accordance with the provisions of E.O. 12866, this rule is considered significant.

E.O. 12866 also directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Under Circular A–4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement pursuant to the Act, we must evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both, constitutes our regulatory alternative analysis for designations.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if this revised designation of critical habitat for *Astragalus magdalenae* var. *peirsonii* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., OHV recreation). We considered each industry or category individually to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Astragalus magdalenae* var. *peirsonii.* Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for a project's impact on *Astragalus magdalenae* var. *peirsonii* and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would

avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing a reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing a reasonable and prudent alternative.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations under section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of a reasonable and prudent alternative. Reasonable and prudent alternatives, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this revised critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Development of the Recreational Area Management Plan for the Imperial Sand Dunes Recreation Area by the Bureau of Land Management;

(2) Issuance of permits for private actions (e.g., filming) on Federal lands within the Dunes by the Bureau of Land Management;

(3) Modifications to the All American Canal by the Bureau of Reclamation; and

(4) Construction and maintenance of facilities by the U.S. Border Patrol.

The most likely Federal involvement would be through Federal projects and permits for private actions on Federal lands.

It is likely that the Bureau of Land Management or other project proponent could modify a project or take measures to protect *Astragalus magdalenae* var. *peirsonii.* The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to proposed designation of critical habitat for *Astragalus magdalenae* var. *peirsonii.* In our analysis of impacts to small entities (appendix A of economic analysis), we estimated that a total of up to 827 small entities in OHV-related sectors could be impacted by critical habitat designation, with 398 of those businesses in Imperial County and 429 in Yuma County. Exhibit A–4 of our Economic Analysis (on page A–8) presents an estimated ''per business impact to small entities.'' In Imperial County, the average impact per small entity is estimated to be $62,200, which is 4.53 percent of the estimated average per business annual sales of $1,370,000. In Yuma County the average impact per small entity is estimated to be $10,400, which is 0.72 percent of the estimated average per business annual sales of $1,440,000. The composite average for both Counties is estimated to be $35,300 per small entity, which is 2.50 percent of the estimated average per business annual sales of $1,410,000. Although a number of small entities will be affected by the designation, we do not believe the economic impact will be significant.

The potential impact to small entities due to the critical habitat designation should be lessened by the exclusion of Unit 2. As discussed above, approximately 93 percent of the potential economic costs associated with the proposed critical habitat are attributed to Unit 2 ($113,000,000 estimated upper bound). Costs to small businesses make up 86 percent of the potential economic impacts associated with the proposed critical habitat in Unit 2. Exclusion of Unit 2 should eliminate about $97,000,000 of the estimated $104,060,000 cost to small businesses (about 93 percent). This exclusion will greatly reduce economic impacts to small entities.

In summary, we have considered whether this final designation of critical habitat for *Astragalus magdalenae* var. *peirsonii* would result in a significant economic impact on a substantial number of small entities. Based on the reasoning discussed above, we certify that the designation of critical habitat for *A. m.* var. *peirsonii* will not result in a significant impact on a substantial number of small business entities. Please see the ''Economic Analysis'' section above, the draft economic analysis, and the final economic analysis for a more detailed discussion of potential economic impacts. A regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and [T]ribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal

private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments, because the majority of the lands (98 percent) involved in the proposed designation are federally owned. As such, Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *Astragalus magdalenae* var. *peirsonii* for this rule in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for *A. m. var. peirsonii* does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final revised critical habitat designation with appropriate State resource agencies in California; however, we did not receive any comments from State or local agencies. The majority of the lands (98 percent) involved in the designation are federally owned and, therefore, the designation has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of section 4 of the Act. This final revised rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus magdalenae* var. *peirsonii.*

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands that meet the definition of critical habitat for *Astragalus magdalenae* var. *peirsonii.* Therefore, critical habitat for *A. m.* var. *peirsonii* has not been designated on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on our economic analysis, energy-related impacts associated with *Astragalus magdalenae* var. *peirsonii* critical habitat designation are not expected. As noted by BLM, the likelihood of any energy-related activity occurring within the critical habitat is minimal for a number of reasons. First, utility corridors exist outside of the critical habitat area. Second, areas of the ISDRA likely to experience development are not included in the designation. Third, the construction and maintenance of projects (such as utility lines) away from current roads, canals, and railways and through the central, more remote portions of the Dunes is likely to be economically infeasible. Thus, this designation is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Author(s)

The primary authors of this rulemaking are staff of the Carlsbad Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In ;17.96(a), revise the entry for ''Family Fabaceae: *Astragalus magdalenae* var. *peirsonii* (Peirson's Milk-Vetch)'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Fabaceae: *Astragalus magdalenae* var. *peirsonii* (Peirson's Milk-Vetch)

(1) Critical habitat units are depicted for Imperial County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Astragalus magdalenae* var. *peirsonii* are:

(i) West and/or northwest-facing sides of bowls, swales, and slopes consisting of Rositas fine sands within intact, active sand dune systems (defined as sand areas that are subject to sand-moving winds) in the existing range of the species that provide space needed for individual and population growth, including sites for germination, reproduction, seed dispersal, seed bank, and pollination;

(ii) The associated co-adapted psammophytic scrub plant community characterized by *Croton wigginsii, Eriogonum deserticola, Helianthus niveus* ssp. *tephrodes, Palafoxia arida* var. *gigantea, Pholisma sonorae, Tiquilia plicata, Petalonyx thurberi*, and *Panicum urvilleanum* that provides habitat for insect pollinators, particularly the white-faced digger bee (*Habropoda pallida*), required for reproduction; and

(iii) Areas within intact, active sand dune systems between occupied bowls, swales, and slopes that allow for pollinator movement and wind dispersal of fruit and seeds.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Data layers defining map units were created using U.S. Geological Survey (USGS) 1:24,000 quadrangles.

(5) *Note:* Index map follows:

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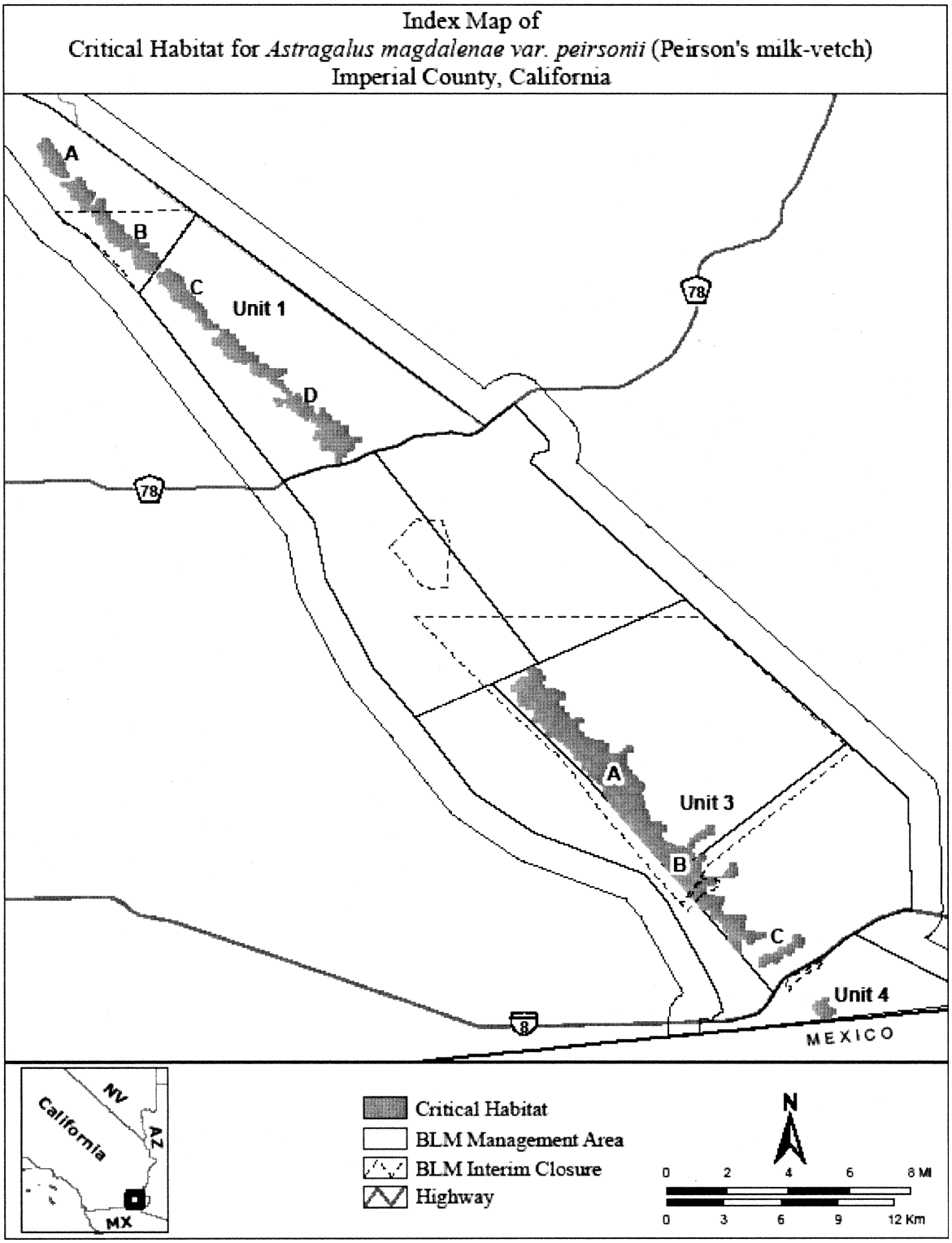
Index Map of Critical Habitat for Astragalus magdalenae var. peirsonii



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(6) Unit 1: Mammoth Wash/North Algodones Dunes Wilderness, Imperial County, California.

(i) Subunit 1A, Mammoth Wash, Imperial County, California. From USGS 1:24,000 quadrangles Amos and Tortuga, lands bounded by the following UTM NAD83 coordinates (E, N): 657000, 3668000; 657300, 3668000; 657300, 3667900; 657400, 3667900; 657400, 3667800; 657500, 3667800; 657500, 3667700; 657600, 3667700; 657600, 3667400; 657800, 3667400; 657800, 3667200; 657900, 3667200; 657900, 3667100; 658000, 3667100; 658000, 3666900; 658100, 3666900; 658100, 3666700; 658200, 3666700; 658200, 3666500; 658100, 3666500; 658100, 3666400; 658200, 3666400; 658200, 3666300; 658300, 3666300; 658300, 3666200; 658400, 3666200; 658400, 3665900; 657900, 3665900; 657900, 3666000; 657700, 3666000; 657700, 3666100; 657600, 3666100; 657600, 3666200; 657400, 3666200; 657400, 3666500; 657300, 3666500; 657300, 3666600; 657100, 3666600; 657100, 3667000; 657000, 3667000; 657000, 3667200; 656900, 3667200; 656900, 3667400; 656800, 3667400; 656800, 3667500; 656700, 3667500; 656700, 3667700; 656800, 3667700; 656800, 3667800; 657000, 3667800; thence returning to 657000, 3668000.

(ii) Subunit 1B, Mammoth Wash, Imperial County, California. From USGS 1:24,000 quadrangle Amos, lands bounded by the following UTM NAD83 coordinates (E, N): 658700, 3665900; 659100, 3665900; 659100, 3665800; 659200, 3665800; 659200, 3665500; 659100, 3665500; 659100, 3665400; 659300, 3665400; 659300, 3665300; 659600, 3665300; 659600, 3665200; 659700, 3665200; 659700, 3665100; 659800, 3665100; 659800, 3665000; 659700, 3665000; 659700, 3664800; 659600, 3664800; 659600, 3664600; 659500, 3664600; 659500, 3664500; 659800, 3664500; 659800, 3664600; 659900, 3664600; 659900, 3664800; 660300, 3664800; 660300, 3664300; 660200, 3664300; 660200, 3664200; 660300, 3664200; 660300, 3664100; 660600, 3664100; 660600, 3663700; 660700, 3663700; 660700, 3663600; 660900, 3663600; 660900, 3663500; 661000, 3663500; 661000, 3663400; 661200, 3663400; 661200, 3663000; 661300, 3663000; 661300, 3662900; 661600, 3662900; 661600, 3662800; 661700, 3662800; 661700, 3662600; 662000, 3662600; 662000, 3662500; 662600, 3662500; 662600, 3662300; 662500, 3662300; 662500, 3662200; 662300, 3662200; 662300, 3662000; 662600, 3662000; 662600, 3661900; 663000, 3661900; 663000, 3661700; 663100, 3661700; 663100, 3661500; 663200, 3661500; 663200, 3661200; 663100, 3661200; 663100, 3661100; 663000, 3661100; 663000, 3661000; 662700, 3661000; 662700, 3660800; 662500, 3660800; 662500, 3660900; 662400, 3660900; 662400, 3661100; 661900, 3661100; 661900, 3661300; 661800, 3661300; 661800, 3661600; 661700, 3661600; 661700, 3662100; 661300, 3662100; 661300, 3662000; 661100, 3662000; 661100, 3662400; 661000, 3662400; 661000, 3662300; 660700, 3662300; 660700, 3662500; 660500, 3662500; 660500, 3662600; 660400, 3662600; 660400, 3662700; 660300, 3662700; 660300, 3663100; 660200, 3663100; 660200, 3663400; 659900, 3663400; 659900, 3663500; 659800, 3663500; 659800, 3663800; 659600, 3663800; 659600, 3664200; 659500, 3664200; 659500, 3664300; 659400, 3664300; 659400, 3664100; 659100, 3664100; 659100, 3664200; 659000, 3664200; 659000, 3664500; 658900, 3664500; 658900, 3664800; 658800, 3664800; 658800, 3664700; 658600, 3664700; 658600, 3664800; 658500, 3664800; 658500, 3665200; 658300, 3665200; 658300, 3665400; 658000, 3665400; 658000, 3665500; 657900, 3665500; 657900, 3665700; 658600, 3665700; 658600, 3665800; 658700, 3665800; thence returning to 658700, 3665900.

(iii) Subunit 1C, North Algodones Wilderness Area, Imperial County, California. From USGS 1:24,000 quadrangles Acolita and Amos, lands bounded by the following UTM NAD83 coordinates (E, N): 663400, 3661100; 663700, 3661100; 663700, 3661000; 663800, 3661000; 663800, 3660900; 664000, 3660900; 664000, 3660800; 664100, 3660800; 664100, 3660700; 664200, 3660700; 664200, 3660600; 664400, 3660600; 664400, 3660300; 664500, 3660300; 664500, 3659900; 664600, 3659900; 664600, 3659800; 664700, 3659800; 664700, 3659700; 664800, 3659700; 664800, 3659600; 665000, 3659600; 665000, 3659300; 665200, 3659300; 665200, 3659200; 665300, 3659200; 665300, 3659100; 665400, 3659100; 665400, 3658900; 665600, 3658900; 665600, 3658400; 665800, 3658400; 665800, 3658300; 665900, 3658300; 665900, 3658100; 666200, 3658100; 666200, 3657900; 666100, 3657900; 666100, 3657800; 666000, 3657800; 666000, 3657900; 665400, 3657900; 665400, 3658000; 665300, 3658000; 665300, 3658200; 665200, 3658200; 665200, 3658300; 665000, 3658300; 665000, 3658700; 664800, 3658700; 664800, 3658900; 664700, 3658900; 664700, 3659000; 664300, 3659000; 664300, 3659200; 664100, 3659200; 664100, 3659300; 663900, 3659300; 663900, 3659400; 663800, 3659400; 663800, 3659500; 663700, 3659500; 663700, 3659800; 663600, 3659800; 663600, 3660000; 663500, 3660000; 663500, 3660100; 663400, 3660100; 663400, 3660200; 663300, 3660200; 663300, 3660300; 663100, 3660300; 663100, 3660500; 663000, 3660500; 663000, 3660800; 663100, 3660800; 663100, 3660900; 663400, 3660900; thence returning to 663400, 3661100.

(iv) Subunit 1D, North Algodones Wilderness Area, Imperial County, California. From USGS 1:24,000 quadrangles Acolita and Glamis NW, lands bounded by the following UTM NAD83 coordinates (E, N): 666500, 3657900; 666700, 3657900; 666700, 3657700; 666800, 3657700; 666800, 3657600; 667100, 3657600; 667100, 3657300; 667300, 3657300; 667300, 3657000; 667600, 3657000; 667600, 3656600; 668100, 3656600; 668100, 3656400; 668300, 3656400; 668300, 3656000; 668700, 3656000; 668700, 3655900; 668800, 3655900; 668800, 3655800; 669500, 3655800; 669500, 3655700; 669600, 3655700; 669600, 3655800; 669800, 3655800; 669800, 3655500; 669600, 3655500; 669600, 3655400; 669400, 3655400; 669400, 3655300; 669300, 3655300; 669300, 3655100; 669600, 3655100; 669600, 3655000; 669500, 3655000; 669500, 3654900; 669700, 3654900; 669700, 3654700; 669900, 3654700; 669900, 3654500; 670100, 3654500; 670100, 3654300; 670200, 3654300; 670200, 3654400; 670500, 3654400; 670500, 3654300; 670600, 3654300; 670600, 3653900; 670900, 3653900; 670900, 3653800; 671200, 3653800; 671200, 3653400; 671300, 3653400; 671300, 3653300; 671500, 3653300; 671500, 3653600; 671600, 3653600; 671600, 3653700; 671800, 3653700; 671800, 3653400; 671900, 3653400; 671900, 3653300; 672100, 3653300; 672100, 3653200; 672200, 3653200; 672200, 3653000; 672600, 3653000; 672600, 3652600; 672700, 3652600; 672700, 3652700; 673000, 3652700; 673000, 3652200; 673100, 3652200; 673100, 3652100; 673700, 3652100; 673700, 3651800; 673400, 3651800; 673400, 3651700; 673300, 3651700; 673300, 3651600; 673400, 3651600; 673400, 3651500; 673300, 3651500; 673300, 3651400; 673100, 3651400; 673100, 3651300; 672900, 3651300; 672900, 3651000; 672700, 3651000; 672700, 3650800; 672600, 3650800; 672600, 3650700; 672400, 3650700; 672400, 3650800; 672300, 3650800; 672300, 3651300; 672200, 3651300; 672200, 3651400; 671600, 3651400; 671600, 3651500; 671500, 3651500; 671500,

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(v) *Note:* Map of Unit 1, Mammoth Wash/North Algodones Dunes Wilderness, follows:

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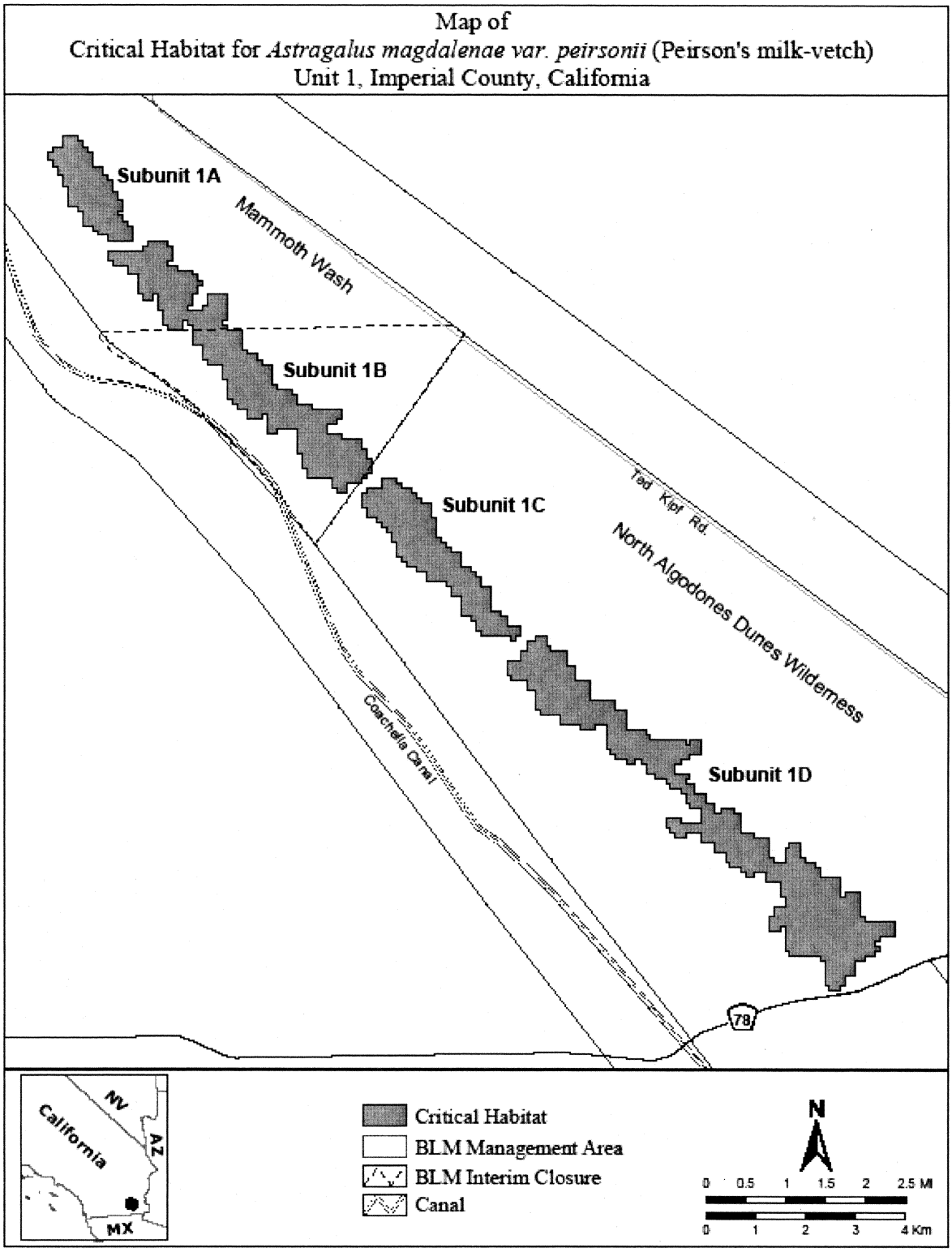


BILLING CODE 4310–55–C

(7) Unit 3: Adaptive Management Area/Ogilby, Imperial County, California.

(i) Subunit 3A, AMA, Imperial County, California. From USGS 1:24,000 quadrangles Cactus, Glamis and Glamis SE, lands bounded by the following UTM NAD83 coordinates (E, N): 682600, 3639800; 682900, 3639800; 682900, 3639700; 683100, 3639700; 683100, 3639600; 683200, 3639600; 683200, 3639400; 683400, 3639400; 683400, 3639100; 683100, 3639100; 683100, 3639000; 683200, 3639000; 683200, 3638800; 683300, 3638800; 683300, 3638700; 683900, 3638700; 683900, 3638600; 684100, 3638600; 684100, 3638500; 684300, 3638500; 684300, 3638400; 684400, 3638400; 684400, 3638100; 684100, 3638100; 684100, 3637700; 684300, 3637700; 684300, 3637400; 684600, 3637400; 684600, 3637100; 684700, 3637100; 684700, 3637000; 685000, 3637000; 685000, 3637100; 685300, 3637100; 685300, 3637000; 685400, 3637000; 685400, 3636800; 685100, 3636800; 685100, 3636400; 685200, 3636400; 685200, 3636300; 685400, 3636300; 685400, 3636100; 685700, 3636100; 685700, 3636000; 685900, 3636000; 685900, 3635900; 686400, 3635900; 686400, 3635700; 686700, 3635700; 686700, 3635200; 687300, 3635200; 687300, 3635300; 687500, 3635300; 687500, 3635400; 687600, 3635400; 687600, 3635500; 687700, 3635500; 687700, 3635600; 687900, 3635600; 687900, 3635500; 688000, 3635500; 688000, 3635300; 687700, 3635300; 687700, 3635000; 687600, 3635000; 687600, 3634700; 687700, 3634700; 687700, 3634500; 687800, 3634500; 687800, 3634300; 687900, 3634300; 687900, 3634100; 688100, 3634100; 688100, 3634000; 688200, 3634000; 688200, 3633900; 688300, 3633900; 688300, 3633700; 688400, 3633700; 688400, 3633600; 688500, 3633600; 688500, 3633500; 688600, 3633500; 688600, 3633300; 688500, 3633300; 688500, 3633200; 688400, 3633200; 688400, 3632900; 688500, 3632900; 688500, 3632600; 688600, 3632600; 688600, 3632200; 688700, 3632200; 688700, 3632100; 688800, 3632100; 688800, 3631900; 688900, 3631900; 688900, 3631800; 688800, 3631800; 688800, 3631700; 688900, 3631700; 688900, 3631500; 689500, 3631500; 689500, 3631300; 689800, 3631300; 689800, 3631000; 689500, 3631000; 689500, 3630600; thence southwestward to y-coordinate 3630000 at the Management Area boundary; thence northwestward along the Management Area boundary to x-coordinate 686700; thence to 686700, 3632800; 686600, 3632800; 686600, 3632900; 686500, 3632900; 686500, 3633000; 686400, 3633000; 686400, 3633400; 686300, 3633400; 686300, 3633500; 686200, 3633500; 686200, 3633600; 686100, 3633600; 686100, 3633800; 685900, 3633800; 685900, 3633900; 685800, 3633900; 685800, 3634000; 685700, 3634000; 685700, 3634200; 685600, 3634200; 685600, 3634300; 685300, 3634300; 685300, 3634700; 685200, 3634700; 685200, 3634800; 685000, 3634800; 685000, 3634900; 684900, 3634900; 684900, 3635200; 684800, 3635200; 684800, 3635300; 684700, 3635300; 684700, 3635400; 684500, 3635400; 684500, 3635500; 684400, 3635500; 684400, 3635600; 684300, 3635600; 684300, 3635800; 684100, 3635800; 684100, 3635900; 684000, 3635900; 684000, 3636000; 683900, 3636000; 683900, 3636100; 683500, 3636100; 683500, 3636200; 683400, 3636200; 683400, 3636500; 683300, 3636500; 683300, 3636600; 683200, 3636600; 683200, 3636700; 683100, 3636700; 683100, 3636800; 682800, 3636800; 682800, 3636900; 682700, 3636900; 682700, 3637100; 682800, 3637100; 682800, 3637500; 682300, 3637500; 682300, 3637700; 682000, 3637700; 682000, 3638000; 681900, 3638000; 681900, 3638500; 681600, 3638500; 681600, 3638800; 681800, 3638800; 681800, 3639000; 681900, 3639000; 681900, 3639100; 682000, 3639100; 682000, 3639200; 682100, 3639200; 682100, 3639300; 682500, 3639300; 682500, 3639500; 682400, 3639500; 682400, 3639700; 682600, 3639700; thence returning to 682600, 3639800.

(ii) Subunit 3B, AMA/Ogilby, Imperial County, California. From USGS 1:24,000 quadrangle Cactus, lands bounded by the following UTM NAD83 coordinates (E, N): 691900, 3631300; 692300, 3631300; 692300, 3630800; 691900, 3630800; 691900, 3630700; 691800, 3630700; 691800, 3630600; 691500, 3630600; 691500, 3630500; 691200, 3630500; 691200, 3630100; 691100, 3630100; 691100, 3629900; 691200, 3629900; 691200, 3629600; 691100, 3629600; 691100, 3629400; 691400, 3629400; 691400, 3629700; 691600, 3629700; 691600, 3629800; 691700, 3629800; 691700, 3629700; 691800, 3629700; 691800, 3629500; 691700, 3629500; 691700, 3629400; 691500, 3629400; 691500, 3629300; 691600, 3629300; 691600, 3628700; 691700, 3628700; 691700, 3628600; thence southwestward to the Management Area boundary at y-coordinate 3627650; thence northwestward along the Management Area boundary to y-coordinate 3630000; thence northeastward to 689500, 3630600; thence to 689600, 3630600; 689600, 3630500; 689700, 3630500; 689700, 3630400; 690000, 3630400; 690000, 3630300; 690200, 3630300; 690200, 3630200; 690700, 3630200; 690700, 3630100; 690900, 3630100; 690900, 3630400; 691000, 3630400; 691000, 3630700; 691200, 3630700; 691200, 3630800; 691300, 3630800; 691300, 3630900; 691500, 3630900; 691500, 3631000; 691600, 3631000; 691600, 3631100; 691800, 3631100; 691800, 3631200; 691900, 3631200; thence returning to 691900, 3631300.

(iii) Subunit 3C, Ogilby, Imperial County, California. From USGS 1:24,000 quadrangle Cactus and Grays Well, lands bounded by the following UTM NAD83 coordinates (E, N): 693100, 3629300; 693400, 3629300; 693400, 3629100; 693500, 3629100; 693500, 3628700; 693300, 3628700; 693300, 3628600; 693200, 3628600; 693200, 3628500; 692400, 3628500; 692400, 3628200; 692300, 3628200; 692300, 3628100; 691900, 3628100; 691900, 3627600; 692300, 3627600; 692300, 3627500; 692800, 3627500; 692800, 3627200; 692700, 3627200; 692700, 3627100; 692500, 3627100; 692500, 3627000; 692600, 3627000; 692600, 3626700; 692700, 3626700; 692700, 3626600; 693800, 3626600; 693800, 3626500; 693900, 3626500; 693900, 3626300; 693800, 3626300; 693800, 3625700; 694400, 3625700; 694400, 3625600; 695000, 3625600; 695000, 3625300; 694700, 3625300; 694700, 3625200; 694400, 3625200; 694400, 3625100; 694300, 3625100; 694300, 3625000; 694000, 3625000; 694000, 3625100; 693900, 3625100; 693900, 3625200; 693700, 3625200; 693700, 3624500; thence westward to the Management Area boundary at y-coordinate 3624500; thence northwestward along the Management Area boundary at x-coordinate 693000; thence to 693000, 3625400; 693100, 3625400; 693100, 3625600; 692900, 3625600; 692900, 3625700; 692800, 3625700; 692800, 3625800; 692700, 3625800; 692700, 3626100; 692500, 3626100; 692500, 3626300; 692100, 3626300; 692100, 3626800; thence westward to the Management Area boundary at y-coordinate 3626800; thence northwestward to y-coordinate 3627650; thence to 691700, 3628600; 692700, 3628600; 692700, 3628700; 692800, 3628700; 692800, 3628800; 692900, 3628800; 692900, 3628900; 693000, 3628900; 693000, 3629000; 693100, 3629000; thence returning to 693100, 3629300; and lands bounded by 696500, 3625500; 696800, 3625500; 696800, 3625300; 697000, 3625300;

697000, 3625000; 696900, 3625000; 696900, 3624800; 696500, 3624800; 696500, 3624600; 696300, 3624600; 696300, 3624400; 696100, 3624400; 696100, 3624500; 695800, 3624500; 695800, 3624200; 695700, 3624200; 695700, 3624000; 695600, 3624000; 695600, 3623900; 695400, 3623900; 695400, 3624000; 695200, 3624000; 695200, 3623900; 695000, 3623900; 695000, 3623800; 694600, 3623800; 694600, 3624300; 694800, 3624300; 694800, 3624400; 694900, 3624400; 694900, 3624500; 695300, 3624500; 695300, 3624400; 695400, 3624400; 695400, 3624600; 695600, 3624600; 695600, 3624700; 695700, 3624700; 695700, 3624800; 696100, 3624800; 696100, 3625000; 696300, 3625000; 696300, 3625100; 696400, 3625100; 696400, 3625400; 696500, 3625400; thence returning to 696500, 3625500.

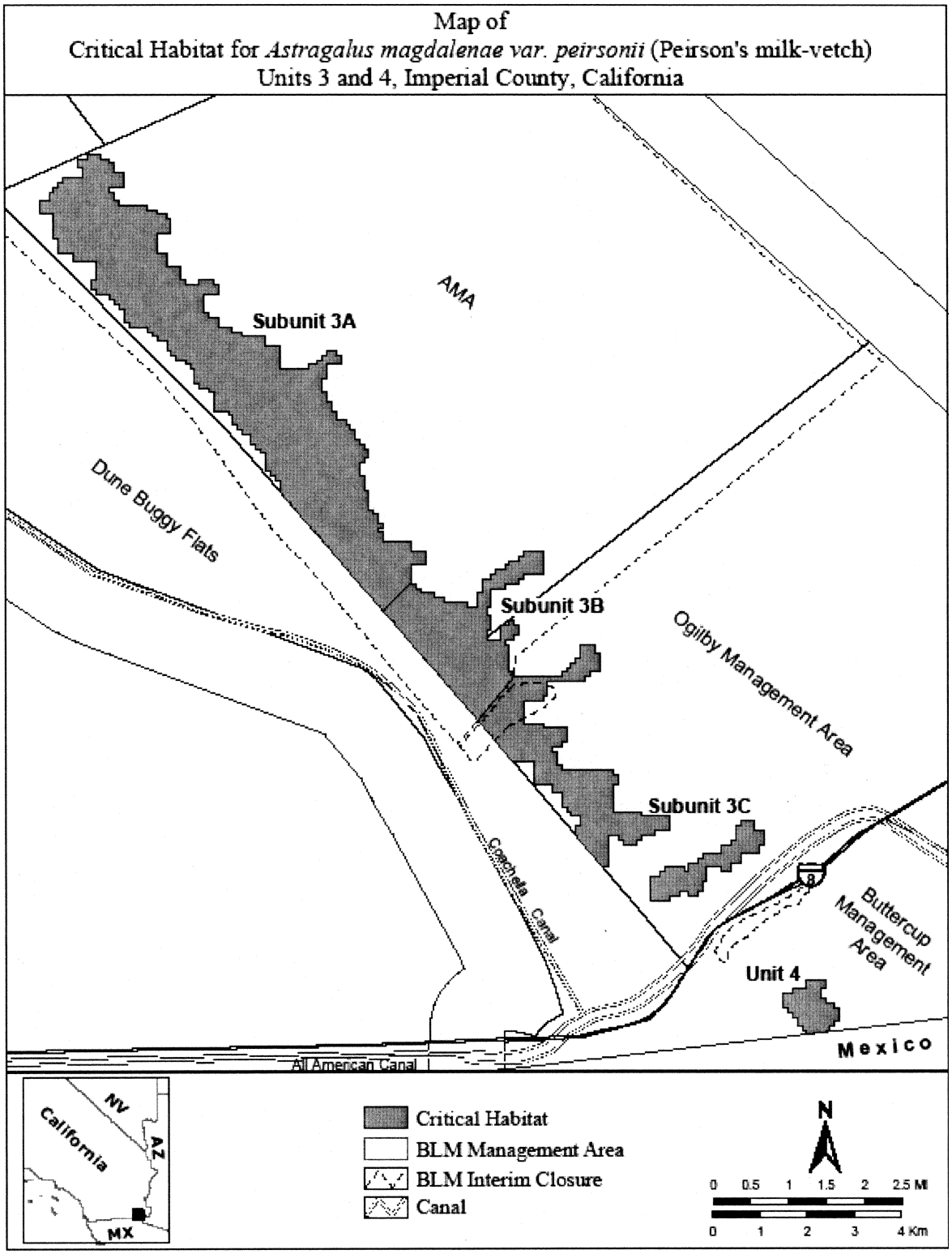
(iv) *Note:* The map depicting Unit 3 is found at paragraph (8)(ii) of this entry.

(8) Unit 4: Buttercup, Imperial County, California.

(i) From USGS 1:24,000 quadrangle Grays Well, lands bounded by the following UTM NAD83 coordinates (E, N): 697900, 3622100; 698300, 3622100; 698300, 3621900; 698200, 3621900; 698200, 3621700; 698300, 3621700; 698300, 3621600; 698500, 3621600; 698500, 3621500; 698600, 3621500; 698600, 3621200; 698500, 3621200; 698500, 3621100; 698400, 3621100; 698400, 3621000; 698300, 3621000; 698300, 3620970; 697900, 3620925; 697900, 3621000; 697800, 3621000; 697800, 3621100; 697700, 3621100; 697700, 3621300; 697600, 3621300; 697600, 3621400; 697500, 3621400; 697500, 3621500; 697400, 3621500; 697400, 3621800; 697600, 3621800; 697600, 3621900; 697900, 3621900; thence returning to 697900, 3622100.

(ii) *Note:* Map of Units 3 and 4 follows:

BILLING CODE 4310–55–P



* * * * *

Dated: February 1, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 08–545 Filed 2–13–08; 8:45 am]

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British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1 et al.; comments due by 2-19-08; published 1-18-08 [FR E8-00824]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 2110/P.L. 110–184

To designate the facility of the United States Postal Service located at 427 North Street in Taft, California, as the "Larry S. Pierce Post Office". (Feb. 6, 2008; 122 Stat. 612)

Last List February 7, 2008

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