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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–1 of October 3, 2008

Unexpected Urgent Humanitarian Needs Related to Pakistan, Afghanistan, and Georgia

Memorandum for the Secretary of State

October 3, 2008

By the authority vested in me by the Constitution and the laws of the United States, including sections 2 and 4(a)(1) of the Migration and Refugee Assistance Act of 1962 (the ''Act''), as amended, (22 U.S.C. 2601 and 2603) and section 301 of title 3, United States Code:

(1) I hereby determine, pursuant to section 2(c)(1) of the Act, that it is important to the national interest to furnish assistance under the Act, in an amount not to exceed $8.3 million from the United States Emergency Refugee and Migration Assistance Fund, for the purpose of meeting unexpected and urgent refugee and migration needs in Pakistan and Afghanistan resulting from intensified armed conflict and flooding, and in Georgia due to recent violence, including by contributions to international, governmental, and nongovernmental organizations, and payment of administrative expenses of the Bureau of Population, Refugees, and Migration of the Department of State; and

(2) The functions of the President in relation to this memorandum under section 2(d) of the Act, and of establishing terms and conditions under section 2(c)(1) of the Act, are assigned to you, and you may further assign such functions to your subordinates, consistent with applicable law.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, October 3, 2008

[FR Doc. E8–24588
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–2 of October 6, 2008

Waiver of Restriction on Providing Funds to the Palestinian Authority

Memorandum for the Secretary of State

October 6, 2008

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 650(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (Division J, Public Law 110–161) (the ''Act''), as carried forward under section 1417 of the Supplemental Appropriations Act, 2008 (Public Law 110–252) (the ''Supplemental''), I hereby certify that it is important to the national security interests of the United States to waive the provisions of section 650(a) of the Act, as carried forward under the Supplemental, in order to provide funds appropriated for fiscal year 2009 under the heading Economic Support Funds to the Palestinian Authority.

You are directed to transmit this determination to the Congress, with a report pursuant to section 650(d) of the Act, as carried forward under the Supplemental, and to publish the determination in the **Federal Register**.

THE WHITE HOUSE,
Washington, October 6, 2008

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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–40]

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9S, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: *Effective Date:* These regulations are effective October 31, 2008. The incorporation by reference of FAA Order 7400.9S is approved by the Director of the Federal Register as of October 31, 2008, through September 15, 2009.

FOR FURTHER INFORMATION CONTACT: Sarah Combs, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3571.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9R, Airspace Designations and Reporting Points, effective September 15, 2007, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective September 15, 2007, through September 15, 2008. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9R in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. On September 22, 2008, the FAA published in the **Federal Register** a final rule extending the IBR approval of FAA Order 7400.9R in section 71.1, as of September 16, 2008 until October 31, 2008 (73 FR 54494). This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.9S, Airspace Designations and Reporting Points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.9S, effective October 31, 2008, through September 15, 2009. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.9S in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.9S in section 71.1, as of October 31, 2008, through September 15, 2009. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.9S.

The FAA has determined that this action: (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. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71. Consequently, notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Because this action will continue to update the changes to the airspace designations, which are depicted on aeronautical charts, and to avoid any unnecessary pilot confusion, I find that good cause exists, under 5 U.S.C. 553(d), for making this amendment effective in less than 30 days.

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.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9S is effective October 31, 2008, through September 15, 2009. During the incorporation by reference period,

proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9S may be obtained from Airspace and Rules Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8783. An electronic version of the Order is available on the FAA Web site at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/*. Copies of FAA Order 7400.9S may be inspected in Docket No. 29334 at *http://www.regulations.gov* or at the National Archives and Records Administration.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.33 [Amended]

■ 6. Paragraph (c) of section 71.33 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of section 71.71 are amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

§ 71.901 [Amended]

■ 11. Paragraph (a) of section 71.901 is amended by removing the words ''FAA Order 7400.9R'' and adding, in their place, the words ''FAA Order 7400.9S.''

Issued in Washington, DC, on October 3, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–24086 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0923; Airspace Docket 08–AEA–22]

Modification of Class E Airspace; Culpeper, VA; Removal of Class E Airspace; Pelham Lake, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct Final rule, Request for Comments.

SUMMARY: This action modifies and restores Class E airspace that had inadvertently been omitted at Culpeper, VA. Additionally, this action transfers airspace listed under Pelham Lake, VA to that listed under Culpeper, VA, more appropriately identifying its official location. This rule increases the safety and management of the National Airspace System (NAS) around the Culpeper Regional Airport and the Culpeper Memorial Hospital Heliport.

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

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800 647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0923; Airspace Docket No. 08–AEA–22, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

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

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

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. This rule is effective and there will be no further action by the FAA 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. 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–2008–0923; Airspace Docket No. 08–AEA–22.'' The postcard will be date stamped and returned to the commenter.

History

Class E airspace is established via rulemaking provisions set forth by the FAA, Department of Transportation and other Agencies of these United States of America. Due to the large number and frequency of changes, the designations are not carried in Title 14, Code of Federal Regulations (14 CFR), part 71. For ease of reference, the FAA provides a compilation of airspace designations and reporting points via FAA Order 7400.9. An evaluation uncovered an omission from the FAA Order 7400.9R caused by a rulemaking airspace action intended to supplement the established Class E airspace at Culpeper, VA. It was also discovered that the referenced city for airspace around Culpeper Memorial Hospital Heliport was addressed to a local community area (Pelham Lake) instead of being appropriately associated with the city of Culpeper. This action additionally corrects the spelling as shown in FAA Order 7400.9R from Culpepper to Culpeper. Minor changes to the dimensions to the established Class E airspace have become necessary due to better computation methods of established Standard Instrument Approach Procedures.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 modifies E5 airspace at Culpeper, VA by reconstituting previously omitted airspace descriptions for the Culpeper Regional Airport, amending said airspace by replacing the decommissioned Culpeper NDB with the Nailr NDB and extending the airspace to 16 miles southwest of the Nailr NDB. Additionally this amendment removes the Culpeper Memorial Hospital's airspace that is linked with Pelham Lake, VA, appropriately associates this Hospital's airspace with the city of Culpeper, VA and substitutes the UDNEW WAYPOINT for the listed Point in Space Coordinates, being the same and part of the Instrument Approach Procedure that is used to develop the airspace serving the Hospital.

Class E5 airspace designations for airspace areas extending upwards from 700 feet above the surface of the Earth are published in Paragraph 6005 of FAA Order 7400.9R, dated August 15, 2007, and effective September 15, 2007, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace 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. 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 modifies the Class E Airspace at Culpeper Regional Airport and Culpeper Memorial Hospital located in Culpeper, VA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration 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 Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, dated August 15, 2007, and effective September 15, 2007, is amended as follows:

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

* * * * *

AEA VA E5 Culpeper, VA [Revised]

Culpeper Regional Airport
(Lat. 38°31′32″ N., long. 77°51′35″ W.)
Nailr NDB
(Lat. 38°27′16″ N., long. 77°54′19″ W.)
Culpeper Memorial Hospital Heliport
(Lat. 38°27′18″ N., long. 78°00′49″ W.)
UDNEW WAYPOINT
(Lat. 38°27′54″ N., long. 78°01′07″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6.5-mile radius of Culpeper Regional Airport and within 8 miles either side of the 217° bearing from the Nailr NDB to 16 miles

southwest of the NDB, and that airspace within a 6.0-mile radius of the UDNEW WAYPOINT that serves the Culpeper Memorial Hospital Heliport.

* * * * *

AEA VA E5 Pelham Lake, VA [Remove]

* * * * *

Issued in College Park, Georgia, on August 26, 2008.

Mark D. Ward,

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

[FR Doc. E8–22467 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 97

[Docket No. 30632; Amdt. No. 3291]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 15, 2008. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 15, 2008.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov to register.* Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under DOT Regulatory 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 3, 2008.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
09/25/08	CO	RIFLE	GARFIELD COUNTY REGIONAL	8/0726	RNAV (RNP) Z RWY 26, ORIG
09/25/08	CO	RIFLE	GARFIELD COUNTY REGIONAL	8/0727	RNAV (RNP) Y RWY 26, ORIG
09/25/08	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	8/0752	ILS OR LOC RWY 21L, AMDT 10
09/30/08	CA	BURBANK	BOB HOPE	8/0914	RNAV (GPS) RWY 8, ORIG–B
09/25/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/0963	ILS OR LOC RWY 14, AMDT 14
09/25/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/0968	RNAV (GPS) RWY 14, ORIG
09/25/08	MS	GULFPORT	GULFPORT-BILOXI INTL	8/0969	VOR/DME OR TACAN RWY 14, AMDT 3
09/25/08	AK	NOME	NOME	8/0990	ILS OR LOC/DME Y RWY 28, AMDT 3A
09/25/08	AK	NOME	NOME	8/0991	LOC/DME BC RWY 10, AMDT 3
09/25/08	AK	NOME	NOME	8/0992	ILS OR LOC/DME Z RWY 28, AMDT 3A
09/30/08	NY	NEW YORK	JOHN F KENNEDY INTL	8/1067	RNAV (GPS) Y RWY 22L, AMDT 1A
09/26/08	CO	DENVER	FRONT RANGE	8/1092	ILS OR LOC RWY 26, AMDT 4
09/26/08	OR	MEDFORD	ROGUE VALLEY INTL-MEDFORD	8/1098	RNAV (GPS) D, ORIG–B
09/26/08	OR	MEDFORD	ROGUE VALLEY INTL-MEDFORD	8/1099	RNAV (GPS) RWY 14, ORIG
09/26/08	MS	LOUISVILLE	LOUISVILLE-WINSTON COUNTY	8/1154	TAKEOFF MINIMUMS AND (OBSTACLE) DP, AMDT 2
09/29/08	MN	CROOKSTON	CROOKSTON MUNI/KIRKWOOD FLD.	8/1442	RNAV (GPS) RWY 31, ORIG
09/29/08	MN	LONG PRAIRIE	TODD FIELD	8/1443	RNAV (GPS) RWY 34, ORIG
09/30/08	KY	LOUISVILLE	LOUISVILLE INTL-STANDIFORD FLD.	8/1586	ILS OR LOC RWY 35R, AMDT 3
09/30/08	CA	ONTARIO	ONTARIO INTL	8/1707	RNAV (GPS) RWY 8R, AMDT 1A
09/30/08	CA	ONTARIO	ONTARIO INTL	8/1709	RNAV (GPS) Y RWY 8L, AMDT 1
09/18/08	VA	STAUNTON/WAYNESBORO/HARRISONBURG.	SHENANDOAH VALLEY REGIONAL.	8/8994	ILS RWY 5, AMDT 8A
09/18/08	VA	STAUNTON/WAYNESBORO/HARRISONBURG.	SHENANDOAH VALLEY REGIONAL.	8/8995	NDB OR GPS RWY 5, AMDT 9B

[FR Doc. E8–24111 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 4

[CBP Dec. 08–27]

Countries Whose Pleasure Vessels May Be Issued Cruising Licenses

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

ACTION: Final rule.

SUMMARY: This document amends the U.S. Customs and Border Protection (CBP) regulations relating to the list of foreign countries whose pleasure vessels may be issued U.S. cruising licenses. Pursuant to information provided by the British Embassy, the Department of State has recommended that CBP update the listing relating to the United Kingdom.

DATES: These amendments are effective on October 15, 2008. The changes reflected in these amendments became applicable on May 1, 2007.

FOR FURTHER INFORMATION CONTACT: Goli Gharib, Regulations and Rulings, Office of International Trade, (202) 572–8851.

SUPPLEMENTARY INFORMATION:

Background

Section 4.94(a) of the CBP regulations (19 CFR 4.94(a)), provides that U.S. documented vessels with a recreational endorsement, used exclusively for pleasure, not engaged in any trade, and not violating the customs or navigation laws of the United States, may proceed from port to port in the United States or to foreign ports without entering or clearing, as long as they have not visited hovering vessels. When returning from a foreign port or place, such pleasure

vessels are required to report their arrival pursuant to § 4.2, CBP regulations (19 CFR 4.2).

Generally, foreign-flag yachts entering the United States are required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States. However, as provided in § 4.94(b), CBP regulations (19 CFR 4.94(b)), CBP may issue cruising licenses to pleasure vessels from certain countries if it is found that yachts of the United States are exempt from formal entry and clearance procedures (*e.g.*, filing manifests, obtaining permits to proceed and paying entry and clearance fees) in those countries.

If a foreign-flag yacht is issued a cruising license, the yacht, for a stated period not to exceed one year, may arrive and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. Upon arrival at each port in the United States, the master of a foreign-flag yacht with a cruising license must report the fact of arrival to the appropriate CBP office. A list of countries whose yachts are eligible for cruising licenses is set forth in § 4.94(b).

By an undated letter received on May 1, 2007, the Department of State informed the Chief, Cargo Security, Carriers and Immigration Branch, CBP, that the British Embassy has advised that the listing for Great Britain in § 4.94(b) requires updating. The Department of State recommends that the reference in § 4.94(b) for Great Britain be revised to read as follows:

> United Kingdom and the Dependencies: the Anguilla Islands, the Isle of Man, the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands.

Additionally, the Department of State recommends that Saint Vincent and the Grenadines; and Saint Kitts and Nevis (formerly the Federation of Saint Christopher and Nevis) be listed separately from the United Kingdom as they are now independent countries.

The Chief, Cargo Security, Carriers and Immigration Branch has found, based on the information provided, that the reciprocity required in § 4.94(b) has been established with respect to the above-referenced countries effective May 1, 2007. Accordingly, under the authority of 46 U.S.C. 60504, yachts from the above-referenced countries used only for pleasure may arrive at and depart from the ports of the United States and cruise in the waters of the United States without payment of any duties or fees. The list of countries in § 4.94(b) is being revised in this final rule document as discussed above. The authority to amend this section of the CBP regulations has been delegated to the Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

Inapplicability of Notice and Delayed Effective Date

Because these amendments merely implement a statutory requirement and confer a benefit upon the public, CBP has determined that notice and public procedure are unnecessary pursuant to section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)). Further, for the same reasons, good cause exists for dispensing with a delayed effective date under section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)).

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is being issued by CBP in accordance with § 0.1(b)(1) of the CBP regulations (19 CFR 0.1(b)(1)).

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Maritime carriers, Vessels, Yachts.

Amendments to the CBP Regulations

■ For the reasons set forth above, part 4 of title 19 of the Code of Federal Regulations (19 CFR part 4) is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority for § 4.94 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

* * * * *

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. 60504;

* * * * *

§ 4.94 [Amended]

■ 2. In § 4.94, the list of countries in paragraph (b) is amended by removing the words ''Great Britain (including Turks and Caicos Islands; St. Vincent (including the territorial waters of the Northern Grenadine Islands), the Cayman Islands, the St. Christopher-Nevis-Anguilla Islands and the British Virgin Islands)'' and adding, in appropriate alphabetical order, the words ''Saint Vincent and the Grenadines'', ''Saint Kitts and Nevis,'' and ''United Kingdom and the Dependencies: the Anguilla Islands, the Isle of Man, the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands''.

Dated: October 9, 2008.

Joanne R. Stump,

Chief, Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade.

[FR Doc. E8–24523 Filed 10–14–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–152–FOR; Docket ID: OSM–2008–0019]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final Rule; rescission of a modified required amendment.

SUMMARY: We are announcing a rescission of a required amendment that we imposed, in modified form, upon the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We had modified a previous version of the required amendment, which we originally imposed in 1991. The United States Court of Appeals for the Third Circuit, and the United States District Court for the Middle District of Pennsylvania, on remand from the Third Circuit, set aside our termination of the 1991 required amendment. We are rescinding the modified required amendment because under those court actions, no action on our part was necessary to implement the Courts' orders.

DATES: *Effective Date:* October 15, 2008.

FOR FURTHER INFORMATION CONTACT: George Rieger, Chief, Pittsburgh Field

Division, Telephone: (717) 782–4036, e-mail: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. The Modified Required Amendment
III. The Basis for Rescission of the Modified Required Amendment
IV. OSM's Decision
V. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982.

From 1982 until 2001, Pennsylvania's bonding program for surface coal mines, coal refuse reprocessing operations and coal preparation plants, was funded under an Alternative Bonding System (ABS), which included a central pool of money (Surface Mining Conservation and Reclamation Fund) used for reclamation, to supplement site-specific bonds posted by operators for each mine site. This pool was funded by a per-acre reclamation fee paid by operators of permitted sites.

In 1991, our oversight activities determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation and we determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites under its purview. As a result, on May 31, 1991, we imposed the required amendment codified at 30 CFR 938.16(h), 56 FR 24687. That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee would assure that its Surface Mining Conservation and Reclamation Fund (Fund) could be operated in a manner that would meet the ABS requirements contained in 30 CFR 800.11(e). After a decade of trying to address the problems with the ABS, the Pennsylvania Department of Environmental Protection (PADEP) terminated the ABS in 2001 and began converting active surface coal mining permits to a Conventional Bonding System (CBS) or ''full-cost'' bonding program. This CBS requires a permittee to post a site specific bond in an amount sufficient to cover the estimated costs to complete reclamation in the event of bond forfeiture.

OSM published a final rule on October 7, 2003 removing the required amendment at 30 CFR 938.16(h) on the basis that the conversion from an ABS to a CBS rendered the requirement to comply with 30 CFR 800.11(e) moot. Subsequent to these OSM actions, a lawsuit was filed in the U.S. District Court for the Middle District Court of Pennsylvania, *Pennsylvania Federation of Sportsmen's Clubs Inc. (PFSC) et al.* v. *Norton No. 1:03–CV–2220*. The district court ruled in OSM's favor, but was reversed by the United States Court of Appeals for the Third Circuit. Subsequently, on November 1, 2007, the District court set aside our October 7, 2003, termination of the 1991 required amendment. The appellate court's decision is discussed in the section below.

You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. The Modified Required Amendment

On August 2, 2007, the United States Court of Appeals for the Third Circuit decided *PFSC* v. *Kempthorne*, 497 F.3d 337 (3rd Cir. 2007). At issue, relevant to this notice, was whether OSM properly terminated the requirement that Pennsylvania demonstrate that its Surface Mining Conservation and Reclamation Fund was in compliance with 30 CFR 800.11(e).

The Third Circuit concluded: ''while it is true that the 'ABS Fund' continues to exist in name, it no longer operates as an ABS, that is, as a bond pool, to provide liability coverage for new and existing mining sites.'' 497 F.3d at 349. However, the Court went on to conclude that ''800.11(e) continues to apply to sites forfeited prior to the CBS conversion.'' *Id.* at 353. In commenting further on 30 CFR 800.11(e), the Court stated ''The plain language of this provision requires that Pennsylvania demonstrate adequate funding for mine discharge abatement and treatment at all ABS forfeiture sites.'' *Id.* at 354.

Because the Third Circuit in *PFSC* v. *Kempthorne, Id.*, reversed the District Court, which had upheld our termination of the 1991 required amendment at 30 CFR 938.16(h), we decided to impose a modified version of amendment ''(h),'' which we believed was fully consistent with the rationale of the Third Circuit's decision while accounting for circumstances which had changed since 1991. Issuance of this modified required amendment was announced in the July 8, 2008, **Federal Register** at 73 FR 38918. It is this modified version of the required amendment that we are hereby rescinding in this action.

III. The Basis for Rescission of the Modified Required Amendment

After we published the modified version of 30 CFR 938.16(h), the Pennsylvania Federation of Sportsmen's Clubs, along with the other Plaintiffs, filed a Motion to Reopen, to Substitute Party, and for Contempt in the matter of *PFSC* v. *Kempthorne, No. 1:03–CV–2220 (M.D. Pa.)*. The Plaintiffs alleged that the Federal Defendants were in contempt of the district court's November 1, 2007, order on remand from the Third Circuit decision in *PFSC* v. *Kempthorne*, 497 F.3d 337 (3rd Cir. 2007), because they revised 30 CFR 938.16(h) from its 1991 form. The Plaintiffs contend that the Federal Defendants disobeyed the district court's order, which the Plaintiffs claim did not authorize any modification to the required amendment. *PFSC* v. *Kempthorne, No. 1:03–CV–2220* (M.D. Pa.) (Motion to Reopen, to Substitute Party, and for Contempt filed July 16, 2008)

In order to resolve the matter of the contempt proceeding, and without admitting any liability with respect to the Plaintiffs' allegations put forth in said proceeding, we have decided to rescind the revised version of the required amendment at 30 CFR 938.16(h). Thus, any potential conflict with the district court's November 1, 2007, Order on Remand, which set aside our decision to remove the 1991 required amendment, is hereby removed.

IV. OSM's Decision

Based on the above discussion, we hereby rescind the required amendment at 30 CFR 938.16(h), as it was revised in the July 8, 2008, **Federal Register** at 73 FR 38918.

This rule is being issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. In view

of the litigation and court order, we have determined that under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. For the same reason, we believe there is good cause under 5 U.S.C. 553(d)(3) of the APA to have the rule become effective on a date that is less than 30 days after the date of publication in the **Federal Register**. This rescission is being made effective immediately in order to encourage Pennsylvania to bring its program into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

V. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b) of that Section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of Section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(c). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State amendment that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 5, 2008.

Thomas D. Shope,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.16 [Amended]

■ 2. In § 938.16, remove paragraph (h).

[FR Doc. E8–24477 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUCO604, are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with their special function as naval vessels. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective October 15, 2008 and is applicable beginning 16 June 2008).

FOR FURTHER INFORMATION CONTACT: Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUCO604 are vessels of the Navy which, due to their special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(a), pertaining to the position of the masthead light or lights being located over the fore and aft centerline of the vessel; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Rule 27(b)(i), pertaining to the placement of three all-round lights in a vertical line and Annex I, paragraph 2(i)(ii), pertaining to the vertical separation of the Restricted Maneuvering Light Array lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Two, by adding, at the end of the table under the ''Vessel'' category, the following entry for Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUCO604:

■ B. In Table Four, Paragraph Sixteen by adding, at the end of the table under the ''Vessel'' category, the following entry for Unmanned Surface Vehicles with hull numbers 11MUC0601, 11MUC0602, 11MUC0603 and 11MUCO604:

■ C. In Table Four by adding new paragraphs 23 and 24:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters: § 2(k), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USV	11MUC0601, 11MUC0602, 11MUC0603, 11MUC0604.	0.40	.....	.....	.....	.....	.....	.....	.....

* * * * *

Table 4

* * * * *

16. * * *

Vessel	Number	Obstruction angle relative ship's headings
USV	11MUCO601, 11MUCO602, 11MUC0603, 11MUC0604	271° thru 278°.

* * * * *

23. On the following ships the verticality of the restricted maneuvering light array do not meet verticality requirements described in Rule 27(b)(i).

Vessel	Number	Verticality of lights, when viewed from directly port or starboard, the lower task light is out of alignment with the upper and middle task light in meters by:
USV	11MUCO601, 11MUCO602, 11MUC0603, 11MUC0604	0.85

24. On the following ships the vertical separation of the Restricted Maneuvering Light Array lights do not meet requirements described in Annex I, paragraph 2(i)(ii).

Vessel	Number	Restricted maneuvering light array, vertical spacing in meters
USV	11MUCO601, 11MUCO602, 11MUC0603, 11MUC0604	0.49

Approved: June 16, 2008.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. E8–24391 Filed 10–14–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 750

[USN–2006–0038]

RIN 0703–AA78

General Claims Regulations

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy has adopted as final, an interim rule amending regulations concerning the administrative processing and consideration of claims on behalf of and against the United States. The revisions will ensure the proper administrative processing and consideration of claims on behalf of and against the United States. This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1).

DATES: This rule is effective October 15, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Dronberger, Claims and Tort Litigation Division (Code 15), Office of the Judge Advocate General, 1322 Patterson Avenue, SE., Washington Navy Yard, DC 20374, telephone: 202–685–4600.

SUPPLEMENTARY INFORMATION: The Department of the Navy published an interim rule at 72 FR 53417 on September 19, 2007, to amend regulations concerning the administrative processing and consideration of claims on behalf of and against the United States. No comments on the interim final rule were submitted. Accordingly, the interim rule amending 32 CFR part 750 is adopted as a final rule with no changes.

Executive Order 12866, ''Regulatory Planning and Review.'' It has been determined that the changes to 32 CFR part 750 are not considered a ''significant regulatory action.'' The rule does not:

(1) Have an annual affect on the economy of $100 million or more or adversely affect in a material way the economy, a sector in the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4). It has been certified that 32 CFR part 750 does not contain Federal Mandates that result in expenditures by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601). It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the processing of the proper administrative processing and consideration of claims on behalf of and against the United States, and does not economically impact the Federal government's relations with the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35). This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

Executive Order 13132, ''Federalism''. It has been certified that 32 CFR part 750 does not have federalism implications as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

Accordingly, the interim rule amending 32 CFR part 750 which was published at 72 FR 53417 on September

19, 2007, is adopted as a final rule without change.

Dated: October 7, 2008.

T.M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–24384 Filed 10–14–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 751

[USN–2006–0039]

RIN 0703–AA79

Personnel Claims Regulations

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy has adopted as final, an interim rule amending regulations concerning the administrative processing and consideration of claims on behalf of and against the United States. The revisions will ensure the proper administrative processing and consideration of claims on behalf of and against the United States. This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1).

DATES: This rule is effective October 15, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Dronberger, Claims and Tort Litigation Division (Code 15), Office of the Judge Advocate General, 1322 Patterson Avenue, SE., Washington Navy Yard, DC 20374, telephone: 202–685–4600.

SUPPLEMENTARY INFORMATION: The Department of the Navy published an interim rule at 72 FR 53421 on September 19, 2007, to amend regulations concerning the administrative processing and consideration of claims on behalf of and against the United States. No comments on the interim final rule were submitted. Accordingly, the interim rule amending 32 CFR part 751 is adopted as a final rule with no changes.

Executive Order 12866, ''Regulatory Planning and Review.'' It has been determined that the changes to 32 CFR part 751 are not considered a ''significant regulatory action.'' The rule does not:

(1) Have an annual affect on the economy of $100 million or more or adversely affect in a material way the economy, a sector in the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4). It has been certified that 32 CFR part 751 does not contain Federal Mandates that result in expenditures by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601). It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the processing of the proper administrative processing and consideration of claims on behalf of and against the United States, and does not economically impact the Federal government's relations with the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35). This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

Executive Order 13132, ''Federalism.'' It has been certified that 32 CFR part 751 does not have federalism implications as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

Accordingly, the interim rule amending 32 CFR part 751 which was published at 72 FR 53421 on September 19, 2007, is adopted as a final rule without change.

Dated: October 7, 2008.

T.M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–24383 Filed 10–14–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 756

[USN–2006–0040]

RIN 0703–AA80

Non-Appropriated Fund Claims Regulations

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy has adopted as final, an interim rule amending regulations concerning the administrative processing of non-appropriated funds. The revisions will ensure the proper administrative processing and consideration of claims on behalf of and against the United States. This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1).

DATES: This rule is effective October 15, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Dronberger, Claims and Tort Litigation Division (Code 15), Office of the Judge Advocate General, 1322 Patterson Avenue, SE., Washington Navy Yard, DC 20374, telephone: 202–685–4600.

SUPPLEMENTARY INFORMATION: The Department of the Navy published an interim rule at 72 FR 53424 on September 19, 2007, to amend regulations concerning the administrative processing of non-appropriated funds. The rule will ensure the proper administrative processing and consideration of claims on behalf of and against the United States. No comments on the interim final rule were submitted. Accordingly, the interim rule amending 32 CFR part 756 is adopted as a final rule with no changes.

Executive Order 12866, ''Regulatory Planning and Review.'' It has been determined that the changes to 32 CFR part 756 are not considered a ''significant regulatory action.'' The rule does not:

(1) Have an annual affect on the economy of $100 million or more or adversely affect in a material way the economy, a sector in the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4). It has been certified that 32 CFR part 756 does not contain Federal Mandates that result in expenditures by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601). It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the processing of the proper administrative processing and consideration of claims on behalf of and against the United States, and does not economically impact the Federal government's relations with the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35). This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

Executive Order 13132, ''Federalism''. It has been certified that 32 CFR part 756 does not have federalism implications as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

Accordingly, the interim rule amending 32 CFR part 756 which was published at 72 FR 53424 on September 19, 2007, is adopted as a final rule without change.

Dated: October 7, 2008.

T.M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–24382 Filed 10–14–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 757

[USN–2006–0041]

RIN 0703–AA81

Affirmative Claims Regulations

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy has adopted as final, an interim rule amending regulations concerning the administrative processing and consideration of claims on behalf of and against the United States. This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1).

DATES: This rule is effective October 15, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Dronberger, Claims and Tort Litigation Division (Code 15), Office of the Judge Advocate General, 1322 Patterson Avenue, SE., Washington Navy Yard, DC 20374, telephone: 202–685–4600.

SUPPLEMENTARY INFORMATION: The Department of the Navy published an interim rule at 72 FR 53426 on September 19, 2007, to amend regulations concerning the administrative processing and consideration of claims on behalf of and against the United States. No comments on the interim final rule were submitted. Accordingly, the interim rule amending 32 CFR part 757 is adopted as a final rule with no changes.

Executive Order 12866, ''Regulatory Planning and Review.'' It has been determined that the changes to 32 CFR part 757 are not considered a ''significant regulatory action.'' The rule does not:

(1) Have an annual affect on the economy of $100 million or more or adversely affect in a material way the economy, a sector in the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4). It has been certified that 32 CFR part 757 does not contain Federal Mandates that result in expenditures by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601). It has been determined that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the processing of the proper administrative processing and consideration of claims on behalf of and against the United States, and does not economically impact the Federal government's relations with the private sector.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35). This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

Executive Order 13132, ''Federalism''. It has been certified that 32 CFR part 757 does not have federalism implications as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

Accordingly, the interim rule amending 32 CFR part 757 which was published at 72 FR 53426 on September 19, 2007, is adopted as a final rule without change.

Dated: October 7, 2008.

T.M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–24381 Filed 10–14–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard; DHS.

ACTION: Notice of compliance date, Captain of the Port Zones Portland (OR), Puget Sound, and San Francisco Bay.

SUMMARY: This document informs owners and operators of facilities located within Captain of the Port Zones Portland (OR), Puget Sound, and San Francisco Bay that they must implement access control procedures utilizing TWIC no later than February 28, 2009.

DATES: The compliance date for the TWIC regulations found in 33 CFR part 105 for Captain of the Port Zones Portland (OR), Puget Sound, and San Francisco Bay is February 28, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this document as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On May 7, 2008, the Coast Guard and TSA issued a final rule to realign the compliance date for implementation of the Transportation Worker Identification Credential. 73 FR 25562. The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels and outer continental shelf facilities must implement access control procedures utilizing TWIC, is now April 15, 2009 instead of September 25, 2008. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as set forth in 33 CFR 105.115(e).

The Coast Guard will continue to announce rolling compliance dates, as provided in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

II. Notice of Facility Compliance Date—COTP Zones Portland (OR), Puget Sound, and San Francisco Bay

Title 33 CFR 105.115(e) currently states that ''[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**.'' Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located within COTP Zones Portland (OR), Puget Sound, and San Francisco Bay that the deadline for their compliance with Coast Guard and TSA TWIC requirements is February 28, 2009.

The TSA and Coast Guard have determined that this date provides sufficient time for the estimated population required to obtain TWICs for these COTP Zones to enroll and for TSA to complete the necessary security threat assessments for those enrollment applications. We strongly encourage persons requiring unescorted access to facilities regulated by 33 CFR part 105 and located in one of these COTP Zones to enroll for their TWIC as soon as possible, if they haven't already. Additionally, we note that the TWIC Final Rule advises owners and operators of MTSA regulated facilities of their responsibility to notify employees of the TWIC requirements. Specifically, 33 CFR 105.200(b)(14) requires owners or operators of MTSA regulated facilities to ''[i]nform facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications.'' Information on enrollment procedures, as well as a link to the pre-enrollment Web site (which will also enable an applicant to make an appointment for enrollment), may be found at *https://twicprogram.tsa.dhs.gov/TWICWebApp/*. You may also visit our Web site at *homeport.uscg.mil/twic* for a framework showing expected future compliance dates by COTP Zone. This list is subject to change; changes in expected future compliance dates will appear on that Web site. The exact compliance date for COTP Zones will also be announced in the **Federal Register** at least 90 days in advance.

Dated: October 7, 2008.

David W. Murk,

Commander, U.S. Coast Guard, Acting Chief, Ports and Facilities Activities.

[FR Doc. E8–24526 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 105

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard; DHS.

ACTION: Notice of compliance date, Captain of the Port Zone New York.

SUMMARY: This document informs owners and operators of facilities located within Captain of the Port Zone New York that they must implement access control procedures utilizing TWIC no later than March 23, 2009.

DATES: The compliance date for the TWIC regulations found in 33 CFR part 105 for Captain of the Port Zone New York is March 23, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this document as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register** (71 FR 29396). This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (72 FR 3492) (hereinafter referred to as the original TWIC final rule). The preamble to that final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in the original TWIC final rule, which became effective on March 26, 2007.

On May 7, 2008, the Coast Guard and TSA issued a final rule to realign the compliance date for implementation of the Transportation Worker Identification Credential. 73 FR 25562. The date by which mariners need to obtain a TWIC, and by which owners and operators of vessels and outer continental shelf facilities must implement access control procedures utilizing TWIC, is now April 15, 2009 instead of September 25, 2008. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as set forth in 33 CFR 105.115(e).

The Coast Guard will continue to announce rolling compliance dates, as provided in 33 CFR 105.115(e), at least 90 days in advance via notices published in the **Federal Register**. The final compliance date for all COTP Zones will not be later than April 15, 2009.

II. Notice of Facility Compliance Date—COTP Zone New York

Title 33 CFR 105.115(e) currently states that ''[f]acility owners and operators must be operating in accordance with the TWIC provisions in this part by the date set by the Coast Guard in a Notice to be published in the **Federal Register**.'' Through this Notice, the Coast Guard informs the owners and operators of facilities subject to 33 CFR 105.115(e) located within COTP Zone New York that the deadline for their compliance with Coast Guard and TSA TWIC requirements is March 23, 2009.

The TSA and Coast Guard have determined that this date provides sufficient time for the estimated population required to obtain TWICs for this COTP Zone to enroll and for TSA to complete the necessary security threat assessments for those enrollment applications. We strongly encourage persons requiring unescorted access to facilities regulated by 33 CFR part 105 and located in this COTP Zone to enroll for their TWIC as soon as possible, if they haven't already. Additionally, we note that the TWIC Final Rule advises owners and operators of MTSA regulated facilities of their responsibility to notify employees of the TWIC requirements. Specifically, 33 CFR 105.200(b)(14) requires owners or operators of MTSA regulated facilities to ''[i]nform facility personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications.'' Information on enrollment procedures, as well as a link to the pre-enrollment Web site (which will also enable an applicant to make an appointment for enrollment), may be found at *https://twicprogram.tsa.dhs.gov/TWICWebApp/.*

You may also visit our Web site at *homeport.uscg.mil/twic* for a framework showing expected future compliance dates by COTP Zone. This list is subject to change; changes in expected future compliance dates will appear on that Web site. The exact compliance date for COTP Zones will also be announced in the **Federal Register** at least 90 days in advance.

Dated: October 7, 2008.

David W. Murk,

Commander, U.S. Coast Guard, Acting Chief, Ports and Facilities Activities.

[FR Doc. E8–24525 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0927]

Drawbridge Operation Regulation; Piscataqua River, Portsmouth, NH, and Kittery, ME, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Sara M. Long (Route 1 Bypass) Bridge across the Piscataqua River at mile 4.0, between Portsmouth, New Hampshire, and Kittery, Maine. Under this temporary deviation, the bridge may remain in the closed position. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 7 a.m. on November 10, 2008 through 5 p.m. on November 14, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0927 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on the rule, call John McDonald, Project Officer, First Coast Guard District, at 617–223–8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION: The Sara M. Long (Route 1 Bypass) Bridge, across the Piscataqua River at mile 4.0,

between Portsmouth, New Hampshire, and Kittery, Maine, has a vertical clearance in the closed position of 10 feet at mean high water and 18 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.531(c).

The owner of the bridge, New Hampshire Department of Transportation, requested a temporary deviation to facilitate scheduled bridge maintenance and electrical operating equipment upgrade maintenance.

Both recreational and commercial vessel traffic transit this bridge. Waterway users were advised of the requested bridge closure period and offered no objection.

Under this temporary deviation, in effect from 7 a.m. on November 10, 2008 through 5 p.m. on November 14, 2008, the Sara M. Long (Route 1 Bypass) Bridge may remain in the closed position. Vessels able to pass under the closed draw may do so at any time.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 1, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–24521 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0951]

Drawbridge Operation Regulations; Raritan River, Perth Amboy, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the NJTRO Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey. Under this temporary deviation the draw may remain in the closed position for one weekend to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 6 a.m. on October 18, 2008 through 5 p.m. on October 19, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0951 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on the rule, call Joe Arca, Project Officer, First Coast Guard District, at 212–668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The NJTRO Bridge, across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, has a vertical clearance in the closed position of 8 feet at mean high water and 13 feet at mean low water. The existing regulations are listed at 33 CFR 117.747.

The owner of the bridge, New Jersey Transit Rail Operations (NJTRO), requested a temporary deviation to facilitate scheduled mechanical maintenance at the bridge.

In order to perform the bridge maintenance the bridge must remain in the closed position.

Under this temporary deviation the NJTRO Bridge across the Raritan River, mile 0.5, at Perth Amboy, New Jersey, need not open for the passage of vessel traffic from 6 a.m. on October 18, 2008 through 5 p.m. on October 19, 2008, with a rain date of October 25, 2008 and October 26, 2008, in the event inclement weather prevents the bridge maintenance from being performed. Vessels that can pass under the draw without a bridge opening may do so at all times.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 2, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–24513 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0974]

Drawbridge Operation Regulation; Harlem River, New York City, NY, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the 145 Street Bridge across the Harlem River, mile 2.8, at New York City, New York. Under this temporary deviation the bridge may remain in the closed position for five days to facilitate bridge maintenance.

DATES: This deviation is effective from October 13, 2008 through October 18, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0974 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager,

Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The 145 Street Bridge, across the Harlem River at mile 2.8, has a vertical clearance in the closed position of 25 feet at mean high water and 30 feet at mean low water. The existing regulations are listed at 33 CFR 117.789(c)(1).

The owner of the bridge, the New York City Department of Transportation (NYCDOT), requested this temporary deviation to facilitate mechanical bridge maintenance.

Habitual users of the waterway normally can transit under the 145 Street Bridge without requesting a bridge opening due to the size of the vessel traffic that frequently transits this waterway and the ample vertical clearance provided by the bridge in the closed position.

Under this temporary deviation the 145 Street Bridge may remain in the closed position from October 13, 2008 through October 18, 2008.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 2, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–24518 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0969]

Drawbridge Operation Regulation; Saugus River, MA, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Fox Hill (SR107) Bridge across the Saugus River at mile 2.5, between Lynn and Saugus, Massachusetts. Under this temporary deviation the bridge may open on a limited operating schedule for several months to facilitate the reliability of the bridge until it can be repaired during the winter months.

DATES: This deviation is effective from October 15, 2008 through December 15, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0969 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions about the rule, call John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Fox Hill (SR107) Bridge has a vertical clearance in the closed position of 6 feet at mean high water and 16 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.618(c).

The Massachusetts Highway Department (MHD) requested a temporary deviation to help insure the safe reliable operation of the bridge until major repairs can be implemented during the winter months when the waterway has little activity.

The waterway has seasonal recreational vessels and commercial lobster fishing vessels of various sizes.

A meeting between the Coast Guard, the owner of the bridge (MHD), and the commercial lobster fleet was held on September 10, 2008. The owner of the bridge presented engineering evidence of the poor condition of the bridge and the need to perform major bridge repairs during the winter months. It was concluded that in order to keep the bridge operating safely and reliably until the major repairs can commence the number of bridge openings must be reduced to save wear and tear on the mechanical components. This temporary deviation is therefore necessary in order to insure that the bridge continues to operate in a safe reliable manner until the major repairs can be made. No objection to the proposed temporary deviation schedule was voiced by interested parties.

Therefore, under this temporary deviation, in effect from October 15, 2008 through December 15, 2008, the Fox Hill (SR107) Bridge shall open on signal on the hour and half hour only between 5 a.m. and 7 p.m.

From 7 p.m. to 5 a.m. the draw shall open on signal if at least a one-hour advance notice is given by calling the number posted at the bridge.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 2, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–24520 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–0825]

Drawbridge Operation Regulation; Cumberland River, Nashville, TN

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Louisville and Nashville (CSX) Railroad Drawbridge, across the Cumberland River, Mile 190.4, at Nashville, Tennessee. The deviation is necessary to retrofit the bridge with an upgraded rail lift system. This deviation allows the bridge to remain in a closed-to-navigation position for a four-day period.

DATES: This deviation is effective from 7 a.m. to 7 p.m., November 17–20, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–0825 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays,

and the Robert A. Young Federal Building, Room 2.107F, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on the rule, call Roger K. Wiebusch, Bridge Administrator, 314–269–2378. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION: CSX Transportation Inc. requested a temporary deviation for the Louisville and Nashville Railroad Drawbridge, mile 190.4, at Nashville, Tennessee, across the Cumberland River to close the bridge to navigation. The Louisville and Nashville Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart. In order to meet the bridge owner's request the deviation period is 7 a.m. to 7 p.m., November 17–20, 2008 for the draw span to remain in the closed-to-navigation position.

There are no alternate routes for vessels transiting this section of the Cumberland River. The bridge has a vertical clearance of 47 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows, barge fleeter, and recreational watercraft. The majority of vessels can pass under the bridge in the closed position. On average there may be no more than two openings during a week. This temporary deviation has been coordinated with waterway users and no objections were raised.

In accordance with 33 CFR 117.35(e), the drawbridge shall return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 30, 2008.

Roger K. Wiebusch,

Bridge Administrator.

[FR Doc. E8–24522 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0166; FRL–8728–1]

Approval and Promulgation of Implementation Plans; Alaska; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the actions of the Alaska Department of Environmental Conservation (ADEC) to address the provisions of Clean Air Act section 110(a)(2)(D)(i) for the 8-hour ozone and PM2.5 National Ambient Air Quality Standards (NAAQS). These provisions require each state to submit a State Implementation Plan (SIP) revision that prohibits emissions that adversely affect another state's air quality through interstate transport. ADEC has adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants for the state of Alaska. These include prohibiting emissions that contribute significantly to nonattainment of the NAAQS in another state, interfere with maintenance of the NAAQS by another state, interfere with plans in another state to prevent significant deterioration of air quality, or interfere with efforts of another state to protect visibility.

DATES: This direct final rule will be effective December 15, 2008, without further notice, unless EPA receives adverse comment by November 14, 2008. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2008–0166, by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: R10-Public_Comments@epa.gov*.

C. *Mail:* Donna Deneen, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Ave., Suite 900, Seattle, Washington 98101.

D. *Hand Delivery or Courier:* EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2008–0166. 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 through *http://www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen at (206) 553–6706, e-mail address: *deneen.donna@epa.gov*, fax number: (206) 553–0110, or the above EPA Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean

EPA. Information is organized as follows:

Table of Contents:

I. Background of Submittal
II. How Alaska's Submittal Addresses the Provisions of Clean Air Act Section 110(a)(2)(D)(i)
III. Statutory and Executive Order Reviews

I. Background of Submittal

EPA is approving Alaska's SIP revisions to address the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i). This CAA section requires each state to submit a SIP that prohibits emissions that could adversely affect another state, addressing four key elements. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in another state, (2) interfere with maintenance of the NAAQS by another state, (3) interfere with plans in another state to prevent significant deterioration of air quality, or (4) interfere with efforts of another state to protect visibility.

EPA issued guidance on August 15, 2006, entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' relating to SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i). As discussed below, Alaska's analyses of its SIP with respect to the statutory requirements of CAA section 110(a)(2)(D)(i) are consistent with the guidance. The discussion below covers how Alaska has addressed the four key requirements of CAA section 110(a)(2)(D)(i).

II. How Alaska's Submittal Addresses the Provisions of Clean Air Act Section 110(a)(2)(D)(i)

Alaska addressed the first two elements of CAA section 110(a)(2)(D)(i) by providing information supporting the conclusion that emissions from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone and $PM_{2.5}$ NAAQS in another state. Importantly, Alaska's southernmost border is separated from the border of the lower 48 states by over 500 air miles which means any 8-hour ozone or $PM_{2.5}$ nonattainment or maintenance area in another state is more than 500 miles from the Alaska border. Alaska also points to aggregate manmade $PM2_{2.5}$ and ozone levels that are minimal relative to national levels. A statewide emission inventory shows that facilities in Alaska make up only 0.1 percent of the total $PM_{2.5}$ emissions in the United States. Similarly, precursor emissions to $PM_{2.5}$ (e.g., sulfur dioxide and nitrogen oxides) and precursor emissions to ozone (e.g., volatile organic compounds and nitrogen oxides) from facilities in Alaska make up only from 0.0 to 0.2 percent of United States' emissions for those pollutants. The mountainous terrain of Alaska, with summits along the state borders that reach more than 5000 feet in height, further provides a natural topographical barrier for emissions of Alaska sources. Based on this information, it is reasonable to conclude that emissions from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone or $PM_{2.5}$ NAAQS in another state.

The third element Alaska addressed is prevention of significant deterioration (PSD). For 8-hour ozone, the state has met the obligation by confirming that it has a fully approved PSD/NSR program. Alaska's PSD/NSR program was approved on February 16, 1995 (60 FR 8943) and more recently on August 14, 2007. 72 FR 45378. The approved program implements the 8-hour ozone standard and relevant requirements of the Phase II ozone implementation rule as required in 69 FR 23951 (April 30, 2004) and 70 FR 71612 (November 29, 2005). For $PM_{2.5}$, Alaska's PSD program is being implemented in accordance with EPA's interim guidance calling for the use of PM_{10} as a surrogate for $PM_{2.5}$ for the purposes of PSD review.

The fourth element Alaska addressed is protection of visibility. EPA's regional haze regulations, 64 FR 35714 (July 1, 1999), require states to submit regional haze SIPS to EPA by December 17, 2007. Since states generally have not submitted their regional haze SIPs, Alaska indicates that it is not possible for Alaska to assess its compatibility or interference with control measures in another state's Regional Haze (visibility) SIP and is working with the Western Regional Air Partnership to prepare a SIP to address EPA's regional haze regulations.[a]

Based on this and other information provided by Alaska in its SIP submittal, EPA believes the state has sufficiently demonstrated that emissions from Alaska do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state, or interfere with measures required to be included in the SIP for any other State to prevent significant deterioration of air quality or to protect visibility. Additional supporting information can be found in the docket.

III. Statutory and Executive Order Reviews

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

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

[a] ADEC combined its CAA section 110(a)(2)(d)(i) SIP revision with revisions to ADEC's regulations at 18 AAC 50 relating to Best Available Retrofit Technology for purposes of public notice and hearing. In this action, EPA is approving ADEC's submittal as it relates to CAA sectin 110(a)(2)(d)(i) and is taking no actions on the revisions to 18 AAC 50 relating to Best Available Retrofit Technology.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 1, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart C—Alaska

■ 2. Section 52.97 is added to read as follows:

§ 52.70 Interstate Transport for the 1997 8-hour ozone and PM2.5 NAAQS.

On February 7, 2008, the Alaska Department of Environmental Conservation submitted a SIP revision to meet the requirements of Clean Air Act section 110(a)(2)(D)(i). EPA has approved this submittal.

[FR Doc. E8–24279 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–AL–0002–200819; FRL–8727–7]

Approval and Promulgation of Implementation Plans: Alabama: Approval of Revisions to the Visible Emissions Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Visible Emissions portion of the State Implementation Plan (SIP) submitted to EPA by the State of Alabama, via the Alabama Department of Environmental Management (ADEM), on September 11, 2003 (the ''2003 ADEM submittal''), and amended by a revision submitted to EPA on August 22, 2008 (the ''2008 ADEM amendment''). The open burning portion of the State of Alabama's 2003 ADEM submittal was previously approved in a separate action on March 9, 2006 (71 FR 12138) and is not relevant to this action. These revisions amend the requirements for units that are required to operate continuous opacity monitoring systems (COMS) and that are not subject to any opacity limits other than those of the Alabama SIP.

DATES: *Effective Date:* This rule will be effective November 14, 2008.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–AL–0002. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9104. Mr. Huey can also be reached via electronic mail at *huey.joel@epa.gov*. For information regarding the Alabama SIP, contact Ms. Stacy Harder at the same address listed above. The telephone number is (404) 562–9042. Ms. Harder can also be reached via electronic mail at *harder.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What Is the Background for This Action?
II. What Action Is EPA Taking?
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Is the Background for This Action?

On September 11, 2003, ADEM submitted a request for EPA approval of a SIP submittal containing proposed revisions to the Visible Emissions portion of the Alabama SIP, found at ADEM Administrative Code (AAC) Chapter 335–3–4–.01, ''Visible Emissions,'' and pertaining to sources of particulate matter (PM) emissions. In an action published on April 12, 2007 (72 FR 18428), EPA proposed to approve the proposed revisions contingent upon Alabama submitting a revised SIP submittal addressing EPA's concerns regarding impacts of the rule changes on attainment of the National Ambient Air Quality Standards (NAAQS), as set forth in 72 FR 18428–18434. EPA's proposal notice stated that the State would have to provide EPA with a revised SIP submittal consistent with certain changes described by EPA in our April 12, 2007, notice of proposed

rulemaking, before EPA would approve the revisions.

EPA provided the public with 60 days to submit comments on our proposed rule and the specific changes needed to make the Alabama submittal approvable into the Alabama SIP. At the request of a commenter, EPA extended the public comment period by 30 days to July 11, 2007. We received four comment letters from industry representatives and one from the State air pollution control agency, all of which were in favor of the rulemaking. We received one comment letter, submitted on behalf of four environmental groups, opposed to it. In general, comments received that were adverse to the proposed rulemaking expressed concerns related to air quality impacts, particularly on the particulate matter NAAQS, suggested inadequate modeling analyses by EPA, and expressed concern with EPA's technical assessment of the relationship between opacity and particulate matter mass emissions. These comments, and EPA's responses to them, are discussed in more detail below in Part III, ''Response to Comments.''

Following the close of the comment period, EPA and ADEM discussed some of the issues raised by the commenters, including comments regarding the potential impact of a revised Visible Emissions rule on attainment of the $PM_{2.5}$ NAAQS in Alabama. Documents memorializing these conversations are part of the docket for this action. As a result of these discussions, ADEM decided to submit the necessary revisions proposed by EPA in our April 2007 **Federal Register** notice to support final approval. ADEM also decided to include an additional limitation on opacity based on public comments. This additional provision limits subject sources to a daily opacity average of no more than 22 percent, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit).[1] This 22 percent cap was selected because it is equivalent to the maximum daily opacity average allowable under the current approved SIP, which allows opacity of up to 40 percent for 24 six-minute averages per day and up to 20 percent for the remainder of the day, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit). That is, under both the existing SIP and the August 22, 2008, revisions, if a source were to operate at its maximum allowable opacity for an entire calendar day, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit), the opacity average for that day would be 22 percent. The equation below illustrates the calculation of 22 percent average daily opacity allowed under the current SIP when T_1, the number of six-minute average periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit), is zero.[2]

$$\frac{(100\%\ \text{opacity} \times T_1) + (40\%\ \text{opacity} \times 24\ \text{six-minute averages}) + (20\%\ \text{opacity} \times (240 - 24 - T_1)\ \text{six-minute averages})}{240\ \text{six-minute averages}}$$

$$= 22\%\ \text{opacity}$$

We derived allowable average daily opacity equations for the current SIP-approved rule and the 2008 ADEM submittal, substituted various exemption durations (T_1) in the equations, determined the corresponding allowable average daily opacities, and organized the results as shown in Table 1 below.

TABLE 1—CALCULATED ALLOWABLE AVERAGE DAILY OPACITY LEVELS FOR VARIOUS STARTUP, SHUTDOWN, LOAD CHANGE, AND RATE CHANGE DURATIONS (T_1), USING ALABAMA'S CURRENT SIP-APPROVED RULE AND THE 2008 ADEM SUBMITTAL

	Calculated allowable average daily opacity (percent) for various startup, shutdown, load change, and rate change durations (T_1)						
	T_1 = 0	T_1 = 12	T_1 = 24	T_1 = 48	T_1 = 120	T_1 = 216	T_1 = 240
Current SIP Approved Rule	22.0	26.0	30.0	38.0	62.0	94.0	100.0
2008 ADEM Submittal	22.0	25.9	29.8	37.6	61.0	92.2	100.0

The text of the new paragraphs added to AAC Chapter 335–3–4–.01 now reads as follows:

(3) The conditions in paragraphs (4) and (5) of this rule apply to each emissions unit that meets all of the following requirements:

(a) A Continuous Opacity Monitoring System (COMS) is used for indication of opacity of emissions;

(b) With respect to opacity limitations, the units are subject only to the opacity provisions stated in paragraph (1) of this rule; and

(c) The COMS system utilized is required to comply with the requirements of 40 CFR

[1] The director's discretion provisions under Alabama rule 335–3–4–.01(1)(c) and (d) would be unchanged by this SIP revision, so periods of excess emissions allowed in a permit pursuant to those provisions would continue to be allowed, as noted here. EPA notes that, as the director's discretion provisions are not being revised by ADEM or reviewed by EPA at present, nothing in this notice should be considered as approving those provisions.

[2] This equation includes the variable, T_1, to represent periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit) because such periods are allowed under both the existing SIP and the proposed revision, although EPA expects that such periods will not occur during most days. In calculating average opacity over a quarter in the April 12, 2007, proposal, EPA also used a range of values for such periods.

60.13 or 40 CFR 75.14 (if applicable) and is required to be certified in accordance with the requirements of 40 CFR part 60, Appendix B, Performance Specification 1.

(4) Except as otherwise exempt under subparagraphs (1)(c) or (1)(d) of this rule, no permittee shall discharge into the atmosphere from any source of emission, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six (6) minute average, except that during each calendar quarter, the permittee may discharge into the atmosphere from any emissions unit qualifying under paragraph (3) of this rule, particulate with an opacity exceeding 20% for not more than twenty-four (24), six (6) minute periods in any calendar day, if such periods do not exceed 2.0 percent of the source calendar quarter operating hours for which the opacity standard is applicable and for which the COMS is indicating valid data.

(5) No permittee shall discharge into the atmosphere from any source of emission particulate of an opacity greater than 22% (excluding exempt periods allowed under subparagraphs (1)(c) and (1)(d) of this rule) averaged over each calendar day.

(6) For a person subject to paragraph (4) of this rule, compliance with the opacity standards in this rule shall be determined by COMS data.

(7) For emissions units described in paragraph (3) above, the permittee shall comply with paragraphs (4) and (5) within 6 months of EPA approval of paragraphs (3), (4), (5), and (6). Until 6 months after EPA approval of paragraphs (3), (4), (5), and (6), emissions units described by paragraph (3) above shall be subject to the emission limit in subparagraph (1)(a) of this rule, the exceptions in subparagraphs (1)(b), (1)(c) and (1)(d) of this rule, and the compliance measurement techniques in paragraph (2) of this rule.

For overall completeness of the changes to the Visible Emissions rule, ADEM also made minor revisions to AAC rules 335–3–4–.01(1)(a), 335–3–4–.01(1)(b), and 335–3–4–.01(2).[3] In accordance with the requirements of the Clean Air Act (CAA), as identified by EPA in our April 2007 proposed rule, ADEM held a public hearing on these revisions on August 6, 2008. The state-adopted revisions were submitted to EPA on August 22, 2008.

II. What Action Is EPA Taking?

Today's action addresses revisions to Alabama SIP rule 335–3–4–.01 (''Visible Emissions''), submitted initially in 2003 and significantly revised and re-submitted on August 22, 2008. These revisions amend the requirements for units that operate COMS and that are not subject to any opacity limits other than those of the Alabama SIP.[4] After consideration of the comments received in response to EPA's April 12, 2007, proposed rule and the State's final SIP revision submittal of August 22, 2008, EPA is taking final action to approve the revisions to the Visible Emissions portion of the Alabama SIP rule. EPA is taking this action pursuant to section 110(k) of the CAA.

This final action is based on EPA's determination that the proposed SIP revision satisfies the requirements of section 110(l) of the CAA. Consistent with our discussion of these issues in the proposed rulemaking (see 72 FR 18428), and after consideration of all public comments submitted thereon, this determination is based upon our findings that (1) the revision would not increase the allowable average opacity levels; and (2) the relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels cannot be quantified readily for the sources subject to this SIP revision, and is particularly uncertain for short-term analyses. In the proposal we calculated the ''average quarterly opacity'' allowed under both the existing SIP and the proposed revision and showed that the proposed revision, with changes specified in the notice, would result in no greater average quarterly opacity allowed than what is allowed under the current standard. Accordingly, we relied primarily on the first finding for a conclusion that the proposed revision, with changes, satisfied the requirements of section 110(l) with respect to the annual PM NAAQS. We relied on the second finding for a conclusion that the proposed revision satisfied the requirements of section 110(l) with respect to the 24-hour PM NAAQS.

In evaluating the changes submitted by Alabama on August 22, 2008, EPA notes that the revised rule as submitted is consistent with, but not limited to, the revisions outlined by EPA in the proposal notice. EPA's April 12, 2007, notice proposed to approve a revised rule, if one were submitted, allowing up to 2.4 hours per day of operation at opacity levels in excess of 20 percent, provided that the total of such periods did not exceed 2 percent of operating time in a quarter, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit). The changes identified by EPA were intended to ensure that the allowable average quarterly opacity under the revised rule would be at least as stringent as (i.e., equal to or lower than) that allowed by the current approved SIP, and to clarify that only a single version of the opacity standard applies to any unit.

As discussed above, the rule as submitted includes not only the limits identified by EPA in the proposal notice but also an additional restriction that a source's daily average opacity may not exceed 22 percent, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit). As a result, unlike the opacity limits evaluated in the proposal, the average daily opacity allowed under the proposed revision as submitted is now no greater than under the current SIP. In this way, the rule as submitted allows us to evaluate the possible impact of changes to the opacity standard on the daily PM NAAQS using the approach we identified in the proposal for evaluating the possible impact of changes on the annual PM NAAQS. Since a calendar day is the shortest period over which compliance with the PM NAAQS is measured, EPA believes it is appropriate under this approach to evaluate whether the allowed average opacity over a calendar day would be any greater under the proposed revision, as submitted, as compared to the existing SIP. Accordingly, EPA believes both of the findings cited in the April 12, 2007, proposal provide support for our conclusion that the proposed revision as submitted satisfies the requirements of section 110(l) with respect to the 24-hour PM NAAQS.

The Alabama Visible Emissions rule revision being approved today provides, for sources meeting the criteria of the revised rule, two situations where opacity levels above 20 percent are

[3] The additional revisions are as follows in the underlined text:

AAC 335–3–4–.01(1)(a): '' Except as provided in subparagraphs (b), (c), (d), or (e) of this paragraph, *and paragraph (3) of this rule*, no person shall discharge into the atmosphere from any source of emission, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six (6) minute average.''

335–3–4–.01(1)(b): ''*For a person not covered by paragraphs (3), (4), and (5) of this rule,* [d]uring one six (6) minute period in any sixty (60) minute period, a person may discharge into the atmosphere from any source of emission, particulate of an opacity not greater than that designated as forty percent (40%) opacity.''

335–3–4–.01(2): ''*For a person subject to subparagraph (1)(b) of this rule*, [c]ompliance with opacity standards in this rule shall be determined by conducting observations in accordance with Reference Method 9 in Appendix A, 40 CFR Part 60, as the same may be amended requiring a six (6) minute average as determined by twenty-four (24) consecutive readings, at intervals of fifteen (15) seconds each.''

[4] Although this new opacity standard would only apply to certain sources using COMS, consistent with EPA's and ADEM's credible evidence rules, nothing in the rule as revised should be construed to preclude the use of COMS to enforce the existing standard or the use of EPA Method 9 to enforce the revised standard.

allowed: (1) 24 six-minute averages per day of up to 100 percent opacity, provided that no subject source can exceed a daily average opacity of 22 percent, excluding periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit); and (2) periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit). The provisions in the first instance above do not apply if a source exceeds 20 percent opacity for more than two percent of the remaining operating time in a quarter, after subtracting out periods of startup, shutdown, load change and rate change (or other short intermittent periods upon terms approved by ADEM's Director and included in a State-issued permit).

III. Response to Comments

EPA proposed to approve the Visible Emissions portion of the SIP revision contained in the 2003 ADEM submittal, provided the State revised it as described in the April 12, 2007, **Federal Register** Notice and submitted it as a SIP revision. At the request of a commenter, EPA extended the 60-day public comment period to 90 days, ending July 11, 2007. 72 FR 32569 (June 13, 2007). The final rule reflects our consideration of the State's revision submitted on August 22, 2008, and all comments received on the proposed action. This section responds to the significant comments.

Comment 1: Commenters objected to EPA's approval of Paragraphs (3), (4) and (5) of AAC rule 335–3–4–.01, stating that doing so would be approving an ''automatic exemption'' from certain emission limitations that must function on a ''continuous basis'' and would result in a violation of Section 302(k) of the CAA and 40 CFR 51.100(z).

Response: The revisions to ACC rule 335–3–4–.01 amend the requirements for certain units that operate COMS and are, therefore, revisions to the rule itself. A source that meets the requirements of the revised standard will be in continuous compliance with the standard. The provisions of the CAA and its implementing regulations cited by the commenters do not require that all SIP measures require compliance with the same numerical emission limitation at all times. *See Kamp* v. *Hernandez,* 752 F.2d 1444 (9 Cir.), *modified,* 778 F.2d 527 (9th Cir. 1985). EPA believes the rule, as amended, does not violate Section 302(k) of the CAA and 40 CFR 51.100(z).

Comment 2: Commenters stated that EPA's analysis of ACC rule 335–3–4–.01 is ''illegal'' because an ''analysis premised on the notion that a relaxation is acceptable as long as average emissions are equal to or no lower than the status quo runs afoul of *Hall,* which explicitly rejected that type of analysis.''

Response: The 9th Circuit Court of Appeals decision in *Hall* v. *U.S. E.P.A.,* 273 F.3d 1146, does not require EPA to disapprove the SIP revision at issue. It is not binding precedent in the 11th Circuit Court of Appeals, and two other circuits have agreed with EPA's view that a SIP revision may be approved under section 110(l) ''unless the agency finds it will make air quality worse.'' See *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); *GHASP* v. *EPA,* No. 06–61030 (5th Cir. Aug. 13, 2008). Furthermore, although the *Hall* court adopted an approach, based on the facts of that case, under which ''EPA must be able to conclude that the particular plan revision before it is consistent with the *development* of an overall plan capable of meeting the Act's attainment requirements,'' EPA believes this revision is consistent with development of an overall plan capable of demonstrating attainment in a timely fashion.

Comment 3: Commenters stated that EPA must perform modeling analysis at every facility subject to the Alabama Visible Emissions rule at AAC rule 335–3–4–.01 and suggest that the State and EPA will be abdicating their responsibility to protect the NAAQS if they do not perform modeling analysis for every facility subject to the proposed rule.

Response: EPA disagrees with the commenters that modeling is required at every facility. As a matter of law, the CAA does not require EPA to perform modeling analysis at every facility subject to the Alabama Visible Emissions rule. For purposes of analyzing SIP revisions, as long as EPA evaluates all of the information before it in light of its expertise and has a reasonable basis for concluding that the rule revision satisfies the requirements of section 110(l) of the CAA, we are authorized to act on a SIP revision. As set forth in the proposed rule, we believe our technical analysis supports approval of the proposed revisions to the Visible Emissions portion of the Alabama SIP, rule 335–3–4–.01. See 72 FR 18428, 18431 (April 12, 2007).

Comment 4: Commenters stated that CAA section 110(l) requires EPA to evaluate whether the proposed SIP revision will make the ambient air worse and whether the existing SIP and the proposed revisions, taken together, will still achieve the necessary pollution reductions required for the State to continue to meet the NAAQS.

Response: Under section 110(l) of the CAA, EPA may not approve revisions to SIPs if the revisions would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Therefore, in determining whether to approve the revisions to Alabama's Visible Emissions rule, we considered the relevant impacts of the proposed change in light of the type of requirement affected by the requested revision. In this instance, the State is proposing revisions to its opacity requirements. EPA notes that the opacity standard itself is not a NAAQS and that the PM emission reduction standards remain unchanged in the approved Alabama SIP. We have considered the impact of Alabama's proposed revision on the NAAQS for PM_{10} and $PM_{2.5}$, and on other applicable requirements, and determined that it satisfies the requirements of CAA section 110(l).

Comment 5: Commenters opposed EPA's approval of paragraphs (3), (4) and (5) of AAC rule 135–3–4–.01, stating that EPA's analysis did not include whether the current rule ''as is'' is adequately protective of the NAAQS and, therefore, EPA's comparison analysis is incapable of providing the information necessary to evaluate the 2003 ADEM submittal.

Response: The CAA requires EPA to evaluate the initial SIP submittal as well as all proposed revisions pursuant to the conditions set forth in section 110(l) of the CAA as cited above. EPA interprets the requirements of section 110(l) to apply with respect to the specific changes being proposed. EPA does not interpret section 110(l) to require a full attainment or maintenance demonstration before any changes to a SIP may be approved. See *Kentucky Resources Council, Inc.* v. *EPA,* 467 F.3d 986 (6th Cir. 2006); see also e.g., 70 FR 53 (Jan. 3, 2005), 70 FR 28429 (May 18, 2005) (proposed and final rules, upheld in *Kentucky Resources,* which discuss EPA's interpretation of section 110(l)). In this action, the State proposed only revisions to its opacity requirements. We evaluated the proposed revisions in light of the relationship between opacity and PM emissions and determined that a reliable and direct correlation could not be readily established, particularly for short-term periods. Nonetheless, there is at least an indirect relationship between opacity and PM emissions, including the use of opacity to track the

effectiveness of PM control equipment operation, and we considered the impact of Alabama's 2003 and 2008 revisions on the NAAQS for PM_{10} and $PM_{2.5}$ and on other applicable emission limits. We concluded that these SIP revisions satisfy the requirements of CAA section 110(l).

Comment 6: Commenters stated that EPA's rationale for approving AAC rule 335–3–4–.01, ''Visible Emissions,'' is not correct because AAC rule 335–3–14–.03(1)(h)(2), ''Emergency Exception,'' serves essentially the same purpose as a ''malfunction exception.'' Therefore, ADEM's claim that there is pressing need to adopt a new two-percent exemption lacks merit.

Response: We did not consider AAC rule 335–3–14–.03(1)(h)(2), ''Emergency Exception,'' in our decision to approve revisions to ACC rule 335–3–4–.01, ''Visible Emissions.'' EPA notes that it does not interpret AAC rule 335–3–14–.03(1)(h)(2) as providing the same sort of exemption for equipment malfunctions that is included in other SIPs (and would be approvable, subject to certain limitations, under current EPA policy and guidance). Section 110(l) requires us to evaluate proposed SIP revisions in relation to applicable requirements of the CAA, not state rules. EPA is not basing our approval of the revision on the lack of a ''malfunction exemption'' in Alabama's SIP.

Comment 7: Commenters stated that EPA may not have complied with the Agency's SIP Consistency Policy. If not, then the Regional Administrator was not authorized as a matter of law to promulgate the proposed SIP revision.

Response: EPA complied with its SIP consistency policy. Documentation of the process is contained in the docket for this rule.

Comment 8: Commenters stated that modeling shows the revisions to AAC rule 335–3–4–.01 would interfere with the $PM_{2.5}$ NAAQS.

Response: EPA does not agree that the modeling submitted by the commenters shows the revisions to the Alabama Visible Emissions rule would interfere with the $PM_{2.5}$ NAAQS. First, the modeling submitted by the commenters assumed that maximum PM emissions will occur at 100 percent opacity and that 100 percent opacity will occur when the electrostatic precipitator (ESP) is turned off. Commenters did not submit data to support this assumption. Data reviewed by EPA in considering this SIP revision suggest a wide variation in opacity associated with PM emission rates across a range of operating conditions for ESPs. For example, data from *Review of Concurrent Mass Emission and Opacity Measurements for Coal-burning Utility and Industrial Boilers* (EPA–600/7–80–062), which is listed in the docket for this rule and is publicly available, on similarly equipped and operated coal-fired electric utilities illustrate the variability of opacity with respect to ESP operation and of opacity with particulate matter emissions. In one example, a facility equipped with a fully energized ESP exhibited 22 percent opacity and a PM emissions rate of 0.314 lbs PM per million British thermal units (BTU). During another test run under the same operating conditions, this facility exhibited a 45 percent increase in opacity to 32 percent opacity, but a 60 percent decrease in PM emissions rate to 0.126 lbs PM per million BTU. Moreover, during another test series for this facility in which the ESP was fully energized for one run, then turned off for another run, the opacity remained constant at 22 percent. Thus, evidence in the docket indicates that, at least for some sources, there is not a universal correlation between operating conditions of the ESP and opacity.

Second, one commenter also stated that the facility could operate at 100 percent opacity for consecutive periods of 2.4 hours per day and up to 4.8 hours in two days back-to-back, thus creating the potential for significant short-term impacts on ambient air quality. The commenter is correct, provided that these periods of operation do not cause the source to exceed two percent of the source calendar operating hours or an average daily opacity of 22 percent. Given Alabama's newly adopted rule, in a hypothetical situation in which a source operated at 100 percent opacity for 2.4 hours, the facility would be limited to no more than 13.3 percent opacity for the remainder of the day; this limit is two-thirds of the otherwise generally applicable limit of 20 percent. EPA notes that the 24-hour PM NAAQS are measured on a calendar-day basis, not as a rolling 24-hour average. Accordingly, EPA does not believe the possibility that a facility could operate for 4.8 hours in two consecutive calendar days indicates that the revised rule would interfere with attainment and maintenance of the 24-hour PM NAAQS. Furthermore, as discussed below, nothing in the Visible Emissions rule excuses a source from compliance with any applicable PM emission limit.

The AERMOD model (a regulatory dispersion model) requires several inputs, including PM emission rate. Some commenters assumed a correlation between opacity and PM emission rate as part of their efforts to model the impact of the revised opacity rule on PM emissions and ambient PM concentrations. Opacity, the degree to which emissions reduce the transmission of light and obscure the view of an object in the background,[5] is a condition, not a pollutant. For a useful relationship to exist between the opacity and mass concentration of the particulate emissions from a pollution source, the characteristics of the particles (size, shape, and composition) must be sufficiently constant, and for a conventional transmissometer (e.g., COMS) to be useful as a monitor of the mass concentration, the particulate characteristics must remain constant over a useful period of time.[6]

There is a general relationship between opacity and PM, which generally develops over longer periods of time. While opacity is used as an indicator of compliance with PM limits in certain regulatory programs, establishing a relationship between PM and opacity that holds for all sources, fuels, control devices, and operating modes can be complex. Opacity may not be a reliable indicator of short-term mass emissions, or for use in projecting changes in short-term PM ambient air quality concentrations. A given opacity level can be associated with a *range* of mass emissions, the level of which depends on fuels, industry, boiler type, and controls. Although source-specific correlations between opacity and mass emissions can be established for some sources, none have been for the sources subject to this SIP revision and therefore assumptions must be made about how a change in the opacity rule might affect the level of PM mass emissions being modeled. These assumptions made about the relationship drive model results and, thus, are important in evaluating the result of the modeling exercise.

For the modeling submittals on the Colbert Plant, commenters assumed maximum opacity for maximum duration from turned-off PM emission control devices. They developed and used differing PM emission rates, one set of rates being four times larger than the other set of rates, underscoring the uncertainty inherent with relating opacity values to mass emissions. They both failed to include impacts of nearby emission sources and of secondary PM emissions, and they both used cumulative PM mass sizing estimates from AP–42 in their calculation of PM_{10} and $PM_{2.5}$; however, one commenter

[5] Measurement of the Opacity and Mass Concentration of Particulate Emissions by Transmissometry, EPA–650/2–74–128, p3.

[6] Measurement of the Opacity and Mass Concentration of Particulate Emissions by Transmissometry, EPA–650/2–74–128, p 21.

used an incorrect value that overpredicts $PM_{2.5}$, and underpredicts PM_{10}, by 2.3 times. One commenter included condensable PM emissions.

PM emissions associated with turned-off control devices are expected to be higher than PM emissions associated with more commonly occurring transient malfunctions of control devices, even though maximum opacity may occur from either situation. In order to examine the impact of Alabama's rule change on the NAAQS, we would need additional information on the range of emission rates associated with 100 percent opacity and other opacity levels. Estimation of PM emissions for a given opacity value is difficult without measurements and is the major deficiency and limitation of any modeling for this rule change. The range of emission rates that could produce 100 percent opacity is not known and is not discussed or established in the modeling submitted during the public comment period.

Therefore, although the modeling presented by commenters shows the possibility of an impact on the NAAQS under a worst-case scenario, the modeling does not convincingly demonstrate the impact of the rule change on the NAAQS because the level of PM emissions while operating at 100 percent opacity, and the source-specific relationship between opacity and PM emissions, are uncertain and are not demonstrated in the public record. For these reasons, the modeling cannot show that the rule change will interfere with the 24-hour NAAQS.

Comment 9: Commenters disagreed with EPA's assertion that ''the relationship between changes in opacity and increases or decreases in ambient $PM_{2.5}$ levels cannot be quantified readily and is particularly uncertain for short-term and site specific analyses.''

Response: EPA's assertion is consistent with the findings contained in *Review of Concurrent Mass Emission and Opacity Measurements for Coal-burning Utility and Industrial Boilers* (EPA–600/7–80–062), which is listed in the docket for this rule and is publicly available. That report was developed from over 400 concurrent particulate matter and opacity measurements and found that any useful and definitive relationships between stack particulate mass emission rates and their corresponding opacity levels appear to be site specific. In addition, as stated in the proposal notice, the uncertainty in assumptions about a correlation between opacity levels and ambient PM concentrations on short-term periods or site specific analyses is a function of many factors, including differences in the mass of particles that exist at the point of COMS measurement in the stack, the total mass of particles exiting the stack, including condensable particles that form immediately upon exposure to the ambient atmosphere, and the mass of particles an ambient sampler is capable of collecting. Commenters submitted no information that demonstrates that opacity can be reliably correlated with mass emissions over short time periods for a range of sources (or these specific sources) without performing site-specific analyses, and EPA is aware of none.

Comment 10: Commenters stated that analyzing air quality impacts on a quarterly basis is not appropriate because EPA already has 24-hour NAAQS standards for PM_{10} and $PM_{2.5}$.

Response: As we stated in the notice of proposed rulemaking and earlier in this final rule, section 110(l) prohibits EPA from approving any revision to a SIP that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement. In this instance we believe that because the State regulation at issue pertains to opacity, the primary CAA requirements of concern should be impacts on compliance with the NAAQS for PM_{10} and $PM_{2.5}$, which include both daily and annual standards. The quarterly time frame commenters refer to is used in AAC rule 335–3–4–.01(4) to prohibit a source from operating at higher opacity levels for greater than 2 percent of the source operating hours per calendar quarter. In light of this specific provision that applies on a quarterly basis, and because analyzing for impacts on a quarterly basis provides a conservative basis for assessing impacts on an annual basis, we decided it appropriate to analyze air quality impacts on a quarterly basis to judge interference with the annual standards, and we concluded the requirements of section 110(l) have been satisfied with respect to all of the PM NAAQS.

Comment 11: Commenters stated that the 2003 revisions to AAC rule 335–3–4–.01, and the conditions set forth in the April 12, 2007, notice of proposed rulemaking, would lead to interference with compliance with mass particulate matter limits. As evidence that its assertion was correct, the commenters stated that if Tennessee Valley Authority (TVA) were to turn off its control equipment for any of its units at the Colbert plant for 2.4 consecutive hours, TVA would violate the PM standard (0.12 lb/mmBtu) at that unit.

Response: The PM limit of 0.12 lb/mmBtu under the Alabama SIP does not include any exempt periods and continues to apply regardless of any revisions to the opacity rule. EPA lacks the data necessary to determine quantitatively what impact, if any, the revisions to the rule would or could have on ambient PM emissions. As described earlier, the commenters' assertion of an approach that allows one to determine the amount of ambient PM emissions based on an increase in stack opacity is fraught with questionable assumptions such as de-energized control devices yielding 100 percent opacity and 100 percent opacity providing maximum PM emissions.

IV. Final Action

EPA is taking final action to approve the Visible Emissions portion of the SIP revisions submitted to EPA by the State of Alabama on September 11, 2003, and August 22, 2008. EPA is approving the revision of paragraphs (1) and (2), and addition of paragraphs (3), (4), (5), (6), and (7) to AAC rule 335–3–4–.01, ''Visible Emissions.''

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 15, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 1, 2008.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

■ 2. Section 52.50(c) is amended by revising the entry for ''Section 335–3–4.01'' to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 335–3–4 Control of Particulate Emissions				
Section 335–3–4–.01	Visible Emissions	9/30/2008	10/15/2008 [Insert citation of publication].	
*	*	*	*	*

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[FR Doc. E8–24031 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0132; FRL–8382–7]

Thiencarbazone-methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of thiencarbazone-methyl [methyl 4-[[[(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl)-carbonyl]amino]sulfonyl]-5-methyl-3-thiophenecarboxylate], *per se*, in or on field corn, pop corn, sweet corn, and wheat; combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT [5-methoxy-4-methyl-2,4-dihydro-3*H*-1,2,4-triazol-3-one], calculated as the parent compound, in or on livestock commodities; and indirect or inadvertent combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT-glucoside [2-hexopyranosyl-5-methoxy-4-methyl-2,4-dihydro-3*H*-1,2,4-triazol-3-one], calculated as the parent compound, in or on soybeans. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 15, 2008. Objections and requests for hearings must be received on or before December 15, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0132. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

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

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0132 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before December 15, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0132, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of April 16, 2008 (73 FR 20633) (FRL–8359–1), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7F7208) by Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition proposed tolerances be established for residues of the herbicide thiencarbazone-methyl, *per se*, in or corn, field, grain at 0.01 parts per million (ppm); corn, sweet, kernels at 0.01 ppm; wheat, grain at 0.01 ppm; and soybean, seed at 0.01 ppm; thiencarbazone-methyl and its metabolites BYH 18636-MMT-glucoside and BYN 18636-N-desmethyl [methyl 4-((([(3-methoxy-5-oxo-4,5-dihydro-1*H*-1,2,4-triazol-1-yl)carbonyl]amino)sulfonyl)-5-methylthiophene-3-carboxylate], calculated as the parent compound, in or on corn, field, forage at 0.03 ppm; corn, sweet, forage at 0.15 ppm; corn, field, stover at 0.04 ppm; corn, sweet stover at 0.04 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; wheat, hay at 0.02 ppm; wheat, straw at 0.02 ppm; wheat, forage at 0.09 ppm; soybean, forage at 0.04 ppm; soybean, hay at 0.15 ppm, and cotton gin by-products at 0.15 ppm; and thiencarbazone-methyl and its metabolite BYH 18636-MMT, calculated as the parent compound, in or on milk at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, fat at 0.01 ppm; cattle, liver at 0.05 ppm; cattle, kidney at 0.02 ppm; goat, meat at 0.01 ppm; goat, fat at 0.01 ppm; goat, liver at 0.05 ppm; goat, kidney at 0.02 ppm; hog, meat at 0.01 ppm; hog, fat at 0.01 ppm; hog, liver at 0.05 ppm; hog, kidney at 0.02 ppm; horse, meat at 0.01 ppm; horse, liver at 0.05 ppm; horse, kidney at 0.02 ppm; sheep, meat at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 0.05 ppm; and sheep, kidney at 0.02 ppm. There were no comments received in response to the notice of filing.

Tolerance levels and commodity expressions have been revised for corn, field, forage; corn, field, stover; corn, sweet, forage; corn, sweet, stover; wheat, forage; wheat, hay; wheat, straw; cotton gin byproducts; soybean, seed; and livestock commodities as a result of the review of the actual residue data and so that the listed commodities agree with current EPA commodity terms. Therefore, EPA is establishing tolerances for residues of thiencarbazone-methyl, *per se*, in or on corn, field, forage at 0.04 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.02 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.01 ppm; corn, sweet, forage at 0.05 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.05 ppm; wheat, forage at 0.10 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.01 ppm; and wheat, straw at 0.01 ppm; combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT, calculated as the parent compound, in or on cattle, meat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat at

0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat at 0.02 ppm; horse, meat byproducts at 0.02 ppm; milk at 0.02 ppm; sheep, meat at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm; and indirect or inadvertent combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT-glucoside, calculated as the parent compound, in or on soybean, forage at 0.04 ppm and soybean, hay at 0.15 ppm. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of thiencarbazone-methyl, *per se*, in or on corn, field, forage at 0.04 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.02 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.01 ppm; corn, sweet, forage at 0.05 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.05 ppm; wheat, forage at 0.10 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.01 ppm; and wheat, straw at 0.01 ppm; combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT, calculated as the parent compound, in or on cattle, meat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat at 0.02 ppm; horse, meat byproducts at 0.02 ppm; milk at 0.02 ppm; sheep, meat at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm; and indirect or inadvertent combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT-glucoside, calculated as the parent compound, in or on soybean, forage at 0.04 ppm and soybean, hay at 0.15 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Thiencarbazone-methyl has low toxicity in acute toxicity and irritation assessments and is not a skin sensitizer. In subchronic and chronic oral toxicity studies, the critical target organ for thiencarbazone-methyl is the urinary tract including the kidney, bladder and ureters. Toxicity in these structures from the formation of calculi that are formed by the deposition of the parent and are associated with the sulfonamide structure and these are evident in the dog, considered the most sensitive species at 179 milligrams/kilograms/day (mg/kg/day) in the chronic study. In mice, at 599 mg/kg/day in males and 758 mg/kg/day in females, doses where there was formation of calculi in the urothelial system, thiencarbazone-methyl was associated with transitional cell epithelium tumors in the urinary bladder in one male and three females and in the prostatic urethra in one male. The battery of mutagenicity/genetic toxicity studies did not indicate a mutagenicity concern. Since the neoplasia occurred only in the high dose group, thiencarbazone-methyl was classified as ''Not likely to be a carcinogen to humans at doses that do not cause urothelial cytotoxicity.''

Specific information on the studies received and the nature of the adverse effects caused by thiencarbazone-methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document Human Health Risk Assessment at pages 56–59 in docket ID number EPA–HQ–OPP–2008–0132.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for thiencarbazone-methyl used for human risk assessment can be found at *http://www.regulations.gov* in document Human Health Risk Assessment at pages 25–26 in docket ID number EPA–HQ–OPP–2008–0132.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to thiencarbazone-methyl, EPA considered exposure under the petitioned-for tolerances. EPA assessed dietary exposures from in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide,

if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

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

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the dietary model Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM-FCID). The modeled exposure estimates for the chronic assessment are based on tolerance level residues, assuming 100% of the crops are treated, and include the highest modeled estimated drinking water concentrations (EDWCs).

iii. *Cancer*. Thiencarbazone-methyl is not likely to be carcinogenic to humans at doses that do not cause urothelium cytotoxicity. The chronic reference dose (cRfD) of 117 mg/kg/day is adequately protective of any cancer or pre-cancerous effects seen in carcinogenicity studies in rats and mice. The formation of the low incidence of the transitional cell tumors of the bladder in both sexes and urethra/prostrate in males that develop at 599 mg/kg/day in males and 758 mg/kg/day in females in mice is considered to be related to secondary effect of the urothelial toxicity (irritation) and regenerative proliferation associated with the formation of urinary tract crystals/calculi. This is commonly seen for bladder carcinogensis in rodents for non-genotoxic chemicals of the sulfonamide class. No tumors were seen in rats.

iv. *Anticipated residue and percent crop treated (PCT) information*. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thiencarbazone-methyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thiencarbazone-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the EDWCs of thiencarbazone-methyl for chronic exposures are estimated to be 0.36 parts per billion (ppb) for surface water and 0.00079 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

For chronic dietary risk assessment, the water concentration of value 0.36 ppb was used to assess the contribution to drinking water.

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

Thiencarbazone-methyl is currently pending registration for the following uses that could result in residential exposures: Application to residential turfgrass and recreational sites. EPA assessed residential exposure using the following assumptions: Residential handlers may receive short-term dermal and inhalation exposure when mixing, loading, and applying the herbicide. Residential post-application exposure via the inhalation route is expected to be negligible; however, dermal exposure is likely for adults and children entering treated lawns. Toddlers may also experience exposure via incidental non-dietary ingestion during post-application activities on treated turf. Residential short-term dermal, inhalation, and incidental oral exposures were assessed using the same NOAEL (159 mg/kg/day). One hundred percent absorption via the dermal and inhalation exposure routes was assumed, resulting in very conservative estimates of risk (MOEs).

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

Although thiencarbazone-methyl has in common with other sulfonamide chemicals the ability to cause urinary tract calculi and in some cases tumors in the urinary tract at high doses, EPA has not made a common mechanism finding for thiencarbazone-methyl such that cumulative risk assessment based on chemicals with a common mechanism is necessary for thiencarbazone-methyl and other sulfonamides. With thiencarbazone-methyl, the formation of calculi in the urinary tract results from the precipitation of thiencarbazone-methyl once it reaches saturation in the animal's system. Precipitation of thiencarbazon-methyl is a physical/chemical process and not a mechanism of toxicity. Exposures to thiencarbazone-methyl and other sulfonamides, are not additive with regard to the formation of urinary tract calculi at anticipated exposure levels. At higher doses, each sulfonamide will form calculi independently of the other by a separate physical/chemical process. At lower doses, near the anticipated exposure levels, calculi will not form even if there is exposure to multiple sulfonamides because sulfonamides will not influence the formation of precipitates by each other. It would be appropriate to add exposures in assessing precipitate formation only if the sulfonamides interacted somehow during crystal formation. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased susceptibility of rat or rabbit offspring to thiencarbazone-methyl as indicated by the rat and rabbit developmental toxicity studies and the rat reproduction study. There is no concern for increased susceptibility to offspring.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for thiencarbazone-methyl is complete, except for immunotoxicity studies. EPA

began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since the requirement went into effect well after this tolerance petition was submitted, these studies are not yet available for thiencarbazone-methyl. In the absence of specific immunotoxicity studies, EPA has evaluated the available toxicity data for thiencarbazone-methyl and determined that an additional database uncertainty factor is not needed to account for potential immunotoxicity. EPA's determination is based on the following considerations.

a. EPA considered the entire toxicity database for thiencarbazone-methyl for adverse effects on the thymus and spleen for possible indications of immunotoxicity and determined that there were no changes in these structures indicative of immunotoxicity. There were also no changes in leucocytes or differential leucocyte counts to suggest an effect on the immune system.

b. Thiencarbazone-methyl does not belong to a class of chemicals that would be expected to be immunotoxic.

c. Therefore, based on the above considerations, EPA does not believe that conducting immunotoxicity testing will result in a NOAEL less than the NOAEL of 117 mg//kg/day already established for thiencarbazone-methyl, and an additional factor (UFDB) for database uncertainties is not needed to account for potential immunotoxicity.

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

iii. There is no evidence that thiencarbazone-methyl results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to thiencarbazone-methyl in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by thiencarbazone-methyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, thiencarbazone-methyl is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thiencarbazone-methyl from food and water will utilize 0.1% of the cPAD for children 1–2 yrs. and children 3–5 yrs. and <0.1% for all other population subgroups.

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

Thiencarbazone-methyl is currently pending registration for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to thiencarbazone-methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 18,700 to adults and 13,500 to children.

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

Although intermediate-term residential exposure could result from the use of thiencarbazone-methyl, no toxicological effects resulting from intermediate-term dosing were observed. Therefore, the aggregate risk is the sum of the risk from food and water and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Thiencarbazone-methyl is not likely to be carcinogenic to humans. The cRfD of 117 mg/kg/day is adequately protective of any cancer or pre-cancerous effects seen in carcinogenicity studies in rats and mice and as the chronic risk assessment shows estimated exposure to thiencarbazone-methyl is well below the cRfD.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

A high performance liquid chromotography/mass spectrometry/mass spectrometry (HPLC/MS/MS) method was submitted for the determination of residues of thiencarbazone-methyl and two metabolites in/on samples of crop commodities. The validated limit of quantification (LOQ) is 0.01 ppm for each analyte in each matrix. A HPLC/MS/MS method was submitted for the determination of residues of thiencarbazone-methyl in livestock commodities. The LOQ is 0.01 ppm.

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

B. International Residue Limits

EPA established tolerances are harmonized with Maximum Residue Limits (MRLs) established in Canda, except for tolerances on livestock commodities, livestock feedstuffs, and soybeans (as a rotational crop).

C. Revisions to Petitioned-For Tolerances

Tolerance levels and commodity expressions have been revised for corn, field, forage; corn, field, stover; corn, sweet, forage; corn, sweet, stover; wheat, forage; wheat, hay; wheat, straw; and livestock commodities as a result of the

review of the actual residue data and so that the listed commodities agree with current EPA commodity terms. EPA concluded that there is no need to establish indirect or inadvertent tolerance levels in or on cotton gin byproducts or soybean, seed because the submitted field rotational crop data demonstrated that residues were not likely to be found on these commodities when the plant back intervals specified on the product labels are followed. EPA determined that the residue(s) of concern for both risk assessment and tolerance expression is thiencarbazone-methyl for corn and wheat commodities, thiencarbazone-methyl and BYH 18636-MMT-glucoside for soybean rotational crop commodities, and thiencarbazone-methyl and BYH 18636-MMT for livestock commodities.

V. Conclusion

Therefore EPA is establishing tolerances for residues of thiencarbazone-methyl, in or on corn, field, forage at 0.04 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.02 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.01 ppm; corn, sweet, forage at 0.05 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, stover at 0.05 ppm; wheat, forage at 0.10 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.01 ppm; and wheat, straw at 0.01 ppm; combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT, calculated as the parent compound, in or on cattle, meat at 0.02 ppm; cattle, meat byproducts at 0.02 ppm; goat, meat at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat at 0.02 ppm; horse, meat byproducts at 0.02 ppm; milk at 0.02 ppm; sheep, meat at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm; and indirect or inadvertent combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT-glucoside, calculated as the parent compound, in or on soybean, forage at 0.04 ppm and soybean, hay at 0.15 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 29, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.645 is added to read as follows:

§ 180.645 Thiencarbazone-methyl; tolerances for residues

(a) *General.* (1) Tolerances are established for residues of thiencarbazone-methyl [methyl 4-[[[(4,5-dihydro-3-methoxy-4-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl)-carbonyl]amino]sulfonyl]-5-methyl-3-thiophenecarboxylate], *per se*, in or on the following food and feed commodities:

Commodity	Parts per million
Corn, field, forage	0.04
Corn, field, grain	0.01
Corn, field, stover	0.02
Corn, pop, grain	0.01
Corn, pop, stover	0.01
Corn, sweet, forage	0.05
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.05
Wheat, forage	0.10
Wheat, grain	0.01
Wheat, hay	0.01
Wheat, straw	0.01

(2) Tolerances are established for combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT [5-methoxy-4-methyl-2,4-dihydro-3*H*-1,2,4-triazol-3-one], calculated as the parent compound, in or on the following food commodities of animal origin:

Commodity	Parts per million
Cattle, meat	0.02
Cattle, meat byproducts	0.02
Goat, meat	0.02
Goat, meat byproducts	0.02
Horse, meat	0.02
Horse, meat byproducts	0.02
Milk	0.02
Sheep, meat	0.02
Sheep, meat byproducts	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent combined residues of thiencarbazone-methyl and its metabolite BYH 18636-MMT-glucoside [2-hexopyranosyl-5-methoxy-4-methyl-2,4-dihydro-3*H*-1,2,4-triazol-3-one], calculated as the parent compound, in or on the following food commodities:

Commodity	Parts per million
Soybean, forage	0.04
Soybean, hay	0.15

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0042; FRL–8377–4]

Cyprosulfamide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the herbicide safener cyprosulfamide in or on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover; and for combined residues of cyprosulfamide and its metabolite 4-(aminosulfonyl)-*N*-cyclopropylbenzamide, calculated as cyprosulfamide, in or on cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts and sheep, meat byproducts. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 15, 2008. Objections and requests for hearings must be received on or before December 15, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0042. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0042 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before December 15, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0042, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

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

II. Petition for Tolerance

In the **Federal Register** of June 13, 2008 (73 FR 33814) (FRL–8367–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E7206) by Bayer CropScience, 2 TW Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by adding a section for the herbicide safener cyprosulfamide and establishing tolerances therein for residues of cyprosulfamide (parent) in or on the raw agricultural commodities field corn grain at 0.01 parts per million (ppm); sweet corn kernels at 0.01 ppm; sweet corn (k+cwhr) at 0.01 ppm; pop corn grain at 0.01 ppm; milk at 0.01ppm; cattle, meat at 0.01 ppm; cattle, fat at 0.01 ppm; cattle, liver at 0.02 ppm; cattle, kidney at 0.05 ppm; goat, meat at 0.01 ppm; goat, fat at 0.01 ppm; goat, liver at 0.02 ppm; goat, kidney at 0.05 ppm; hog, meat at 0.01 ppm; hog, fat at 0.01 ppm; hog, liver at 0.02 ppm; hog, kidney at 0.05 ppm; horse, meat at 0.01 ppm; horse, fat at 0.01 ppm; horse, liver at 0.02 ppm; horse, kidney at 0.05 ppm; sheep, meat at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, liver at 0.02 ppm; and sheep, kidney at 0.05 ppm; and for residues of parent cyprosulfamide and its metabolites AE 0001789-sulfonamide-alanine, AE 0001789-sulfonamide-lactate, and AE 0001789-N-cyclopropyl-4-sulfamoylbenzamide in or on the raw agricultural commodity field corn forage at 0.15 ppm, sweet corn forage at 0.40 ppm, field corn stover at 0.60 ppm, sweet corn stover at 0.60 ppm, and pop corn stover at 0.60 ppm. That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the metabolites to be included in the tolerance expression for livestock, corn forage and corn stover commodities; modified tolerance levels for corn stover commodities and field corn forage; and revised the livestock commodities for which tolerances are needed as well as the livestock commodity tolerance levels. The reasons for these changes are explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of the herbicide safener cyprosulfamide in or on corn, field, forage at 0.20 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.20 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.20 ppm; corn, sweet, forage at 0.40 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; and corn, sweet, stover at 0.35 ppm; and for combined residues of cyprosulfamide and its metabolite 4-(aminosulfonyl)-*N*-cyclopropylbenzamide, calculated as cyprosulfamide, in or on cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Cyprosulfamide has low toxicity in acute toxicity and irritation studies and is not a skin sensitizer. In subchronic and chronic oral toxicity studies, the critical target organ for cyprosulfamide is the urinary tract including the kidney, bladder and ureters. Toxic effects in these organs include inflammation and irritation resulting from the formation of calculi caused by deposition of the parent compound at high doses.

In the rat chronic toxicity/carcinogenicity study, at doses associated with mortality due to nephropathy, there were treatment-related transitional cell carcinomas in the kidney of one male and a transitional cell carcinoma in the urinary bladder of one female. In mice, at a dose where there was formation of calculi in the urothelial system, cyprosulfamide was associated with two incidents of transitional cell papilloma in the urinary bladder. Since the neoplasms occurred only at high doses that also demonstrated calculi formation, cyprosulfamide was classified as ''Not likely to be a Carcinogen to Humans at doses that do not cause urothelial cytotoxicity.'' None of the battery of mutagenicity or genetic toxicity studies indicated a positive result for cyprosulfamide.

There is no evidence of developmental toxicity in the prenatal developmental toxicity studies in the rat and rabbit and no evidence of increased qualitative or quantitative susceptibility of fetuses in these studies or of offspring in the 2–generation reproduction study in rats. Specific neurotoxicity was not identified in the rat, mouse or dog subchronic or chronic studies or in the rat acute and subchronic neurotoxicity screen studies.

Specific information on the studies received and the nature of the adverse effects caused by cyprosulfamide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document *Cyprosulfamide: Human Health Risk Assessment for Proposed Uses on Corn (Field, Sweet, and Pop), Sorghum (Seed Treatment), Residential Turf and*

Ornamentals, page 55 in docket ID number EPA–HQ–OPP–2008–0042.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for cyprosulfamide used for human risk assessment can be found at *http://www.regulations.gov* in the document *Cyprosulfamide: Human Health Risk Assessment for Proposed Uses on Corn (Field, Sweet, and Pop), Sorghum (Seed Treatment), Residential Turf and Ornamentals* in docket ID number EPA–HQ–OPP–2008–0042.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to cyprosulfamide, EPA considered exposure under the petitioned-for tolerances. No other tolerances have been established for cyprosulfamide. EPA assessed dietary exposures from cyprosulfamide in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for cyprosulfamide; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed that 100% of crops with requested uses of cyprosulfamide are treated and that all treated crops contain residues at the tolerance level.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified cyprosulfamide as ''Not likely to be a Carcinogen to Humans at doses that do not cause urothelial cytotoxicity ''; therefore, a cancer exposure assessment is unnecessary for this chemical.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue or PCT information in the dietary assessment for cyprosulfamide. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyprosulfamide in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyprosulfamide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of cyprosulfamide for chronic exposures for non-cancer assessments are estimated to be 2.4 parts per billion (ppb) for surface water and 0.14 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 2.4 ppb was used to assess the contribution to drinking water.

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

Cyprosulfamide is proposed for registration on the following use sites that could result in residential exposures: Residential turfgrass, ornamentals and recreational sites. EPA assessed residential exposure using the following assumptions: Homeowners who apply cyprosulfamide to ornamentals and turfgrass may be exposed for short-term durations via the dermal and inhalation routes. Short-term dermal and inhalation exposures were assessed for residential handlers who mix, load and apply liquid cyprosulfamide products using low-pressure hand wands and garden hose-end sprayers.

There is also potential for short-term postapplication dermal exposure of adults and children and incidental oral exposure of children following application of cyprosulfamide to turf (e.g. home lawns). EPA assessed adult and toddler postapplication dermal exposures as well as incidental oral exposure of toddlers from hand-to-mouth, object-to-mouth and incidental soil ingestion activities.

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

Although cyprosulfamide has in common with other sulfonamide chemicals the ability to cause urinary tract calculi and in some cases tumors in the urinary tract at high doses, EPA has not made a common mechanism finding for cyprosulfamide such that cumulative risk assessment based on chemicals with a common mechanism is necessary for cyprosulfamide and other sulfonamides. With cyprosulfamide, the formation of calculi in the urinary tract results from the precipitation of cyprosulfamide once it reaches saturation in the animal's system. Precipitation of cyprosulfamide is a physical/chemical process and not a mechanism of toxicity. Exposures to cyprosulfamide and other sulfonamides, such as thiencarbazone-methyl, are not

additive with regard to the formation of urinary tract calculi at anticipated exposure levels. At higher doses, each sulfonamide will form calculi independently of the other by a separate physical/chemical process. At lower doses, near the anticipated exposure levels, calculi will not form even if there is exposure to multiple sulfonamides because sulfonamides will not influence the formation of precipitates by each other. It would be appropriate to add exposures in assessing precipitate formation only if the sulfonamides interacted somehow during crystal formation. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for cyprosulfamide includes rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats. There was no evidence of increased susceptibility of *in utero* rats or rabbits in the prenatal developmental studies or of young rats in the 2–generation reproduction study.

No fetal effects were seen in the rat developmental toxicity study at doses that produced maternal toxicity (weight gain effects and indications of kidney effects in one animal). There are two rabbit developmental studies available for cyprosulfamide. A second study was conducted due to excess maternal toxicity (including deaths) in the first study. As in the rat study, no fetal effects were seen in either rabbit study at doses that resulted in maternal toxicity (body weight decrease, reduced food consumption, and kidney effects in both studies; as well as deaths in the first study).

In the rat reproduction study, effects in the pups occurred at doses that also resulted in maternal toxicity. Mid-dose effects included organ weight changes in the spleen and urinary tract in the dams and body weight changes in the pups. At the high dose, there was mortality among the dams associated with poor physical condition and severe renal lesion; effects in pups at the high dose included decreased pup weight, delayed vaginal opening (apparently related to the decreased pup weight), reduced viability (3 total litter loss in the F1 generation), reduced lactation index and clinical findings (paleness, cold to touch, missing milk spot and thin appearance). No increase in sensitivity of the pups was indicated.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for cyprosulfamide is complete, except for immunotoxicity studies. EPA began requiring functional immunotoxicity testing of all food and non-food use pesticides on December 26, 2007. Since the requirement went into effect well after this tolerance petition was submitted, these studies are not yet available for cyprosulfamide. In the absence of specific immunotoxicity studies, EPA has evaluated the available toxicity data for cyprosulfamide and determined that an additional database uncertainty factor is not needed to account for potential immunotoxicity. EPA's determination is based on the following considerations.

a. There was some indication of possible immunotoxicity in the form of increased severity of lymphocytolysis in the subchronic mouse study in females, but only at a high dose of about 1,300 mg/kg/day. Although minimal lymphocytolysis was seen in the control animals, lymphocytolysis to a slightly greater degree was observed in some of the high dose animals. This minor difference in severity is not of concern because:

(1) The marginal change in severity between control and dosed animals was only noted at a very high dose and may not constitute an adverse effect.

(2) No similar effect was seen in the carcinogenicity study in the mouse at about 600 mg/kg/day or in other species.

b. EPA considered the entire toxicity database for cyprosulfamide for potential adverse effects on the thymus and spleen as indications of potential immunotoxicity. Although changes in thymus weight and shape and brown pigment in the spleen were noted, these were determined to be non-specific changes not indicative of immunotoxicity.

c. Cyprosulfamide does not belong to a class of chemicals that would be expected to be immunotoxic.

Therefore, based the considerations in this Unit, EPA does not believe that conducting immunotoxicity testing will result in a NOAEL less than the NOAEL of 39 mg/kg/day already established for cyprosulfamide, and an additional factor (UFDB) for database uncertainties is not needed to account for potential immunotoxicity.

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

iii. There is no evidence that cyprosulfamide results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed assuming 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to cyprosulfamide in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by cyprosulfamide.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the

product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified in the toxicology studies for cyprosulfamide and no acute dietary endpoint was selected. Therefore, cyprosulfamide is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to cyprosulfamide from food and water will utilize less than 1% of the cPAD for the U.S. population and all population subgroups, including infants and children. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyprosulfamide is not expected.

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

Cyprosulfamide is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cyprosulfamide. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures aggregated result in aggregate MOEs of 6,900 for adults and 5,300 for children (toddlers). The aggregate MOE for adults is based on the residential turf scenario and includes combined food, drinking water, dermal and inhalation exposures for residential handlers as well as post-application dermal exposures from activities on treated turf. The aggregate MOE for children includes food, drinking water and post-application dermal and incidental oral exposures (hand-to-mouth, object-to-mouth and soil ingestion) from activities on turf areas previously treated with cyprosulfamide.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure through food and water (considered to be a background exposure level). Cyprosulfamide is not registered for any use patterns that would result in intermediate-term residential exposure. Therefore, the intermediate-term aggregate risk is the sum of the risk from exposure to cyprosulfamide through food and water, which has already been addressed, and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population*. EPA classified cyprosulfamide as ''Not likely to be a Carcinogen to Humans at doses that do not cause urothelial cytotoxicity. '' Cyprosulfamide is not expected to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression in plants (High Pressure Liquid Chromatography/Mass Spectrometry/Mass Spectromety (HPLC/MS/MS) Method UB–008–P06–01) and livestock commodities (HPLC/MS/MS Method UB–008–P06–01/02). The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits (MRLs) established for residues of cyprosulfamide in crop or livestock commodities. However, the U.S. is working with Canada and the United Kingdom to achieve MRL harmonization for corn grain.

C. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA has modified the metabolites to be included in the tolerance expression for livestock, corn forage and corn stover commodities; modified tolerance levels for corn stover commodities and field corn forage; and revised the livestock commodities for which tolerances are needed as well as the livestock commodity tolerance levels.

The petitioner proposed tolerances for residues of cyprosulfamide and three metabolites (AE 0001789-sulfonamide-alanine, AE 0001789-sulfonamide-lactate, and AE 0001789-*N*-cyclopropyl-4-sulfamoylbenzamide) on corn forage and stover commodities as follows: Field corn forage at 0.15 ppm; field corn stover at 0.60 ppm; pop corn stover at 0.60 ppm; sweet corn forage at 0.40 ppm; and sweet corn stover at 0.60 ppm. Based on limited toxicity data for AE 0001789-*N*-cyclopropyl-4-sulfamoylbenzamide, this metabolite cannot be excluded as a residue of concern based on hazard considerations. The other two metabolites (AE 0001789-sulfonamide-alanine, AE 0001789-sulfonamide-lactate) are expected to be less toxic than the parent compound based on structure activity relationship (SAR) analysis and can thus be excluded as residues of concern based on hazard considerations. In corn field trials, residues of all four compounds were low (most below the limit of quantitation of 0.01 ppm), with parent cyprosulfamide levels being the highest of the four. Based on the lack of hazard concern for two of the metabolites and the low levels of all three, EPA concluded that parent cyprosulfamide is the residue of concern to be included in the tolerance expression for corn commodities, including forage and stover. The results of the field trials support tolerances for residues of cyprosulfamide, *per se*, of 0.20 ppm in/on field corn forage and stover; 0.20 ppm in/on popcorn stover; 0.40 ppm in/on sweet corn forage; and 0.35 ppm in/on sweet corn stover.

The petitioner proposed tolerances for residues of cyprosulfamide, *per se*, on meat (0.01 ppm), fat (0.01 ppm), liver (0.02 ppm) and kidney (0.05 ppm) of cattle, goat, hog, horse and sheep; and milk (0.01 ppm). As noted in this Unit, EPA concluded that the metabolite AE 0001789-*N*-cyclopropyl-4-sulfamoylbenzamide (4-(aminosulfonyl)-*N*-cyclopropylbenzamide) cannot be excluded as a residue of concern based on hazard considerations. The data from the submitted cattle feeding study indicate that no quantifiable residues of cyprosulfamide or this metabolite are expected in milk, meat or fat. However, quantifiable residues of cyprosulfamide and its metabolite may occur in meat byproducts (kidney and liver) of cattle, goat, horse and sheep. Based on the calculated dietary burden of swine, there is no reasonable expectation of residues of cyprosulfamide or its metabolite in swine (hog) commodities. Therefore, EPA determined that tolerances are needed only for residues of cyprosulfamide and its metabolite (4-(aminosulfonyl)-*N*-cyclopropylbenzamide) in/on the meat byproducts of cattle, goat, horse and sheep. The submitted data and calculated dietary burden for ruminants

indicate that a tolerance level of 0.02 ppm in these commodities is appropriate.

V. Conclusion

Therefore, tolerances are established for residues of the herbicide safener cyprosulfamide (*N*-[[4-[(cyclopropylamino)carbonyl] phenyl]sulfonyl]-2-methoxybenzamide) in or on corn, field, forage at 0.20 ppm; corn, field, grain at 0.01 ppm; corn, field, stover at 0.20 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 0.20 ppm; corn, sweet, forage at 0.40 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; and corn, sweet, stover at 0.35 ppm; and for combined residues of cyprosulfamide and its metabolite, 4-(aminosulfonyl)-*N*-cyclopropylbenzamide, calculated as cyprosulfamide, in or on cattle, meat byproducts at 0.02 ppm; goat, meat byproducts at 0.02 ppm; horse, meat byproducts at 0.02 ppm; and sheep, meat byproducts at 0.02 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 29, 2008.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.644 is added to read as follows:

§ 180.644 Cyprosulfamide; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the herbicide safener cyprosulfamide, *N*-[[4-[(cyclopropylamino)carbonyl] phenyl]sulfonyl]-2-methoxybenzamide, in or on the following raw agricultural commodities:

Commodity	Parts per million
Corn, field, forage	0.20
Corn, field, grain	0.01
Corn, field, stover	0.20
Corn, pop, grain	0.01
Corn, pop, stover	0.20
Corn, sweet, forage	0.40
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, stover	0.35

(2) Tolerances are established for residues of the herbicide safener cyprosulfamide, *N*-[[4-[(cyclopropylamino)carbonyl] phenyl]sulfonyl]-2-methoxybenzamide, and its metabolite 4-(aminosulfonyl)-*N*-cyclopropylbenzamide, calculated as cyprosulfamide, in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, meat byproducts	0.02
Goat, meat byproducts	0.02
Horse, meat byproducts	0.02
Sheep, meat byproducts	0.02

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertant residues.* [Reserved]

[FR Doc. E8–24034 Filed 10–14–08; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2148; MB Docket No. 08–133; RM–11465]

Television Broadcasting Services; Greenville, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Esteem Broadcasting of North Carolina, LLC, licensee of station WYDO–DT, to substitute DTV channel 47 for DTV channel 14 at Greenville, North Carolina.

DATES: The final rule is effective November 14, 2008.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–133, adopted September 23, 2008, and released September 25, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under North Carolina, is amended by adding channel 47 and removing channel 14 at Greenville.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–24290 Filed 10–14–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2160; MB Docket No. 08–136; RM–11468]

Television Broadcasting Services; Wittenberg, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed by Davis Television Wausau, LLC, licensee of station WFXS(TV), to substitute DTV channel 31 for DTV channel 50 at Wittenberg, Wisconsin.

DATES: The final rule is effective November 14, 2008.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–136, adopted September 22, 2008, and released September 26, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Wisconsin, is amended by adding channel 31 and removing channel 50 at Wittenberg.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–24291 Filed 10–14–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1858; MB Docket No. 08–204; RM–11492]

Television Broadcasting Services; Vanderbilt, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Media Bureau grants a petition for reconsideration, reinstates, and grants a petition for rulemaking filed by Cadillac Telecasting, Co., licensee of station WFUP(TV), to add DTV channel 45 at Vanderbilt.

DATES: The final rule is effective October 29, 2008.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order and Order,* MB Docket No. 08–204, adopted and released on September 30, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding channel DTV channel 45 at Vanderbilt.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–24301 Filed 10–14–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080302353–8620–01]

RIN 0648–AO16

Taking of the Cook Inlet, Alaska Beluga Whale Stock by Alaska Natives

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

ACTION: Final rule.

SUMMARY: NMFS issues final regulations establishing long-term limits on the maximum number of Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence and handicraft purposes. These regulations were developed after proceedings and public comment connected to an on-the-record rule-making and hearings before Administrative Law Judge (ALJ) Parlen L. McKenna (Judge McKenna); consultations with the parties to the hearings, including Alaska Native Organizations; and comments received from the public on the Cook Inlet Beluga Whale Subsistence Harvest Draft Supplemental Environmental Impact Statement (SEIS). These regulations are intended to conserve and manage Cook Inlet belugas under applicable provisions of the Marine Mammal Protection Act (MMPA) until the whales are no longer depleted under the MMPA.

DATES: Effective November 14, 2008.

ADDRESSES: Information related to this rule-making process, including the Final SEIS and Record of Decision (ROD), is available on the Internet at the following address: *http://www.fakr.noaa.gov/protected resources/whales/beluga.htm.*

Copies of the Final SEIS, ROD, and other information related to this rule may also be obtained by writing to Kaja Brix, Assistant Regional Administrator for Protected Resources, NMFS Alaska Regional Office, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Barbara Mahoney, Alaska Region, Anchorage Field Office, (907) 271–5006; or Thomas Eagle, Office of Protected Resources, (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION: This final rule implements long-term limits on the maximum number of Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes. This final rule is based upon the complete record of the hearing process and on comments and other information obtained since receipt of Judge McKenna's recommended decision in November 2005. The action is needed to allow Alaska Natives to continue subsistence harvests that support traditional, cultural, and nutritional needs without preventing or unreasonably delaying the recovery of, and not disadvantaging, this depleted beluga whale stock.

Background

The MMPA established a moratorium on the taking of marine mammals, including whales such as the Cook Inlet beluga whale. However, MMPA section 101(b) (16 U.S.C. 1371(b)) provides an exception to the moratorium which allows certain Alaska Indian, Aleut, and Eskimo residents to take any marine mammal, if such taking is for subsistence purposes or for creating and selling authentic Native articles of handicrafts and clothing and is not accomplished in a wasteful manner.

MMPA section 101(b) also authorizes NMFS to prescribe regulations for subsistence harvests on depleted marine mammal stocks. In accordance with MMPA sections 101(b) and 103 (16 U.S.C. 1373), such regulations must be adopted using formal rulemaking procedures, including an agency hearing on the record before an Administrative

Law Judge. The subsistence harvest regulations resulting from the administrative process must be supported by substantial evidence submitted through the administrative hearing proceedings and other authorized sources.

After monitoring a decline in the beluga population from 1994 through 1998, NMFS designated Cook Inlet belugas as a depleted population under the MMPA (65 FR 34590, May 31, 2000). In October 2000 (65 FR 59164, October 4, 2000), NMFS proposed regulations to set upper limits on the number of Cook Inlet beluga whales that could be taken for subsistence purposes by Alaska Natives and to establish other terms and conditions upon which taking of this beluga stock could be authorized through co-management agreements.

In December 2000, the first of two evidentiary hearings on NMFS' proposed rule was held before an Administrative Law Judge in Anchorage, AK. After considering the administrative record, written records forwarded to his office, and stipulations and evidence adduced at the formal hearing, Judge McKenna forwarded his first recommended decision, as approved by the parties, to NMFS on March 29, 2002, for an interim harvest for the years 2001–2004 (67 FR 30646, May 7, 2002); however, provisions governing the taking of belugas during 2005 and subsequent years were not finalized for reasons discussed below. Based on the first ALJ recommended decision, NMFS issued interim regulations (69 FR 1973, April 6, 2004) to govern the subsistence taking of Cook Inlet beluga whales. These regulations included provisions for (1) an interim limit on the number of strikes and an allocation of these strikes on beluga whales by Alaska Natives during the years 2001 through 2004, (2) the requirement for a cooperative agreement pursuant to MMPA section 119 (16 U.S.C. 1388), (3) a prohibition on the sale of certain parts of Cook Inlet beluga whales, (4) a prohibition on the taking of beluga calves and adults with calves, and (5) a restriction on the timing of beluga whale hunts. The impacts of alternatives for the interim harvest regulations, including the preferred alternative, were analyzed in the June 2003 EIS, which is available on the Internet (see **ADDRESSES**). Additional relevant background can be found in the interim harvest rule.

As part of the stipulation the parties submitted to the ALJ after the initial hearing, they agreed to certain principles that the long-term harvest limits should be based upon. The parties agreed to develop a long-term harvest regime that:

(a) Provides reasonable assurance that the population will recover, within an acceptable period of time, to the point where it is no longer considered depleted under the MMPA;

(b) Takes into account the uncertainty concerning the available knowledge of the population dynamics and vital rates of the Cook Inlet beluga whale population;

(c) Allows for periodic adjustment on the allowable strike levels based upon the results of the population abundance surveys and other relevant information, recognizing the strike level set forth in the 2001–2004 interim harvest regime will not be reduced below this minimum without substantial information (for example documented ''unusual mortalities'') demonstrating that subsistence takes must be reduced below this minimum level to allow recovery of the Cook Inlet beluga population from its depleted status); and

(d) Can be readily understood by diverse constituencies.

Concurrent with the issuance of his first recommended decision and publication of the interim harvest rule, Judge McKenna directed the parties to work together to develop long-term harvest limits and for NMFS to submit a proposed harvest plan based on the efforts by the participating agencies and Alaska Natives. Following Judge McKenna's direction, the parties agreed to several elements for the harvest regime in early discussions and to convene a working group of scientific experts (Technical Team) to propose and evaluate alternatives for harvest limits. Among the general agreements was that (1) harvest limits should be established in blocks of multiple years, (2) there should be a mechanism to reduce remaining harvest if an emergency arose during a multi-year block, and (3) there is a minimum abundance threshold below which harvest should not be allowed. The Technical Team agreed upon a population model to create the harvest regime and to evaluate performance of alternative strategies to control harvest limits. As directed by Judge McKenna, NMFS, in consultation with the other parties in the proceeding, drafted a proposal for a long-term harvest plan to complete the rule-making process that was initiated in 2000. NMFS submitted its revised proposed long term harvest plan to Judge McKenna on April 30, 2004.

NMFS proposed the use of 5–year blocks for establishing harvest levels, which would provide a reasonable planning time for affected Alaska Natives, so that hunters could prepare and proportion the harvest appropriately, while allowing NMFS a certain amount of flexibility to adjust the harvest based on abundance estimates and the rate of population growth. The 5–year blocks were incorporated into subsequent proposals, negotiations, and discussions by agreement of the parties.

The parties were unable to reach full agreement on a long-term harvest plan. To resolve differences, in August 2004, Judge McKenna convened another hearing in Anchorage, Alaska. The following parties participated at the hearing: National Marine Fisheries Service, the Marine Mammal Commission, the Native Village of Tyonek, Joel and Deborah Blatchford, and the Cook Inlet Treaty Tribes. At the hearing, testimony was received into the record addressing NMFS' proposed long-term harvest plan and to consider other parties' proposals.

The hearing addressed a variety of issues, some more significant than others. The significant issues were as follows:

(1) Development of triggers that would stop harvest should the abundance estimate decline to a specific floor;

(2) Development of triggers that would reduce the harvest should NMFS detect a specified probability that the population's growth rate is less than a specific level;

(3) Whether the harvest level should increase if an intermediate vs. low growth rate is determined; and

(4) How NMFS would account for unusually high mortalities and the affect on mortalities of harvest reduction or stoppage.

Following the hearing, Judge McKenna received further submissions and evidence, all of which were incorporated into the record for this final rule.

ALJ's Recommended Decision

On November 8, 2005, Judge McKenna issued his second recommended decision. This decision recommended a plan for long-term limits on the maximum number of Cook Inlet beluga whales that may be taken by Alaska Natives for subsistence purposes. NMFS announced the availability of Judge McKenna's recommended decision (72 FR 8268, February 16, 2006) and provided a 20–day comment period on the recommended decision. Four letters with comments were received. Summaries of those comments and responses appear below.

Comment 1: Hunting should not be allowed to resume on a proposed endangered stock until such time that the Cook Inlet beluga population goals have been achieved.

Response: Under these harvest regulations, subsistence harvest is allowed only when the 5–year abundance average is more than 350 belugas. NMFS plans to provide for the recovery of the beluga population while recognizing the needs of Alaska Natives for subsistence purposes. The MMPA provides for the taking of marine mammals by Alaska Natives for subsistence and handicraft purposes. The MMPA also limits the government's authority to restrict harvest of these species by Alaska Natives. There is no legal basis to eliminate opportunity for subsistence harvest of a species that has been proposed as endangered, under the Endangered Species Act (ESA). NMFS determined that this final rule provides reasonable assurance that the harvest would not cause a significant delay in recovery of the Cook Inlet beluga population. Accordingly, the harvest limits in this rule would not jeopardize the continued existence of Cook Inlet beluga whales, and a conference pursuant to ESA section 7(a)(4) was not conducted. If Cook Inlet beluga whales are listed as an endangered species, ESA section 10(e) provisions would apply; however, such listing would not affect this final rule.

Comment 2: Hunting should continue and Alaska Native hunters should get at least two belugas per year.

Response: Given the lack of population growth since harvest was limited in 1999, hunting as suggested in this comment would not provide reasonable assurance that the harvest would result in an insignificant delay in recovery. Accordingly, it is inconsistent with guiding principles adopted by the parties in the administrative hearing.

Comment 3: NMFS should retain the option to reconsider the interim harvest limits that would be established through 2009.

Response: NMFS selected Alternative 2 Option B, in which the harvest table would be put into effect immediately (in 2008).

Comment 4: If NMFS is not able to meet the level of survey effort capable of detecting population declines with reasonable certainty, sufficient flexibility needs to be incorporated into the harvest plan to add additional protections to the beluga that offsets increased uncertainty in abundance estimates.

Response: Conducting annual abundance estimates would provide more frequent information on population trends, but NMFS cannot guarantee funding for annual estimates during the life of this harvest plan. The harvest plan does not require annual surveys; however, the ability to detect population trends is lower if surveys are conducted less frequently. Greater uncertainty in the growth rate as a result of fewer surveys, however, would likely result in the specification of a lower harvest level in the harvest plan.

Comment 5: The harvest management regime should consider population trends over shorter intervals (e.g., 5 to 10 years) rather than relying on the long-term trends relative to 1994.

Response: In this final rule, NMFS modified Judge McKenna's recommended decision by calculating population growth rate on the most recent 10–years of abundance estimates (see Decision of the Assistant Administrator for Fisheries, NOAA, for a discussion related to modifying the population growth rate used in long-term harvest limits).

Comment 6: NMFS statement that co-management agreements may include provisions regarding the sex composition of the harvest should clarify that the rationale for such limitations would be to minimize the taking of reproductively active females in the harvest.

Response: In his recommended decision, Judge McKenna noted that the Commission and NMFS advocated that Alaska Natives should try to harvest male beluga whales because such selection was believed to have less negative effect on the population's reproductive potential. NMFS has adopted Judge McKenna's findings to allow sex composition of the harvest to specified in 5–year co-management agreements and his reasons for this finding (see Decision of the Assistant Administrator for Fisheries, NOAA). NOAA also believes that targeting males would minimize the taking of reproductively active females.

Comment 7: Because the 5–year abundance average is already below 350 belugas, the Administrative Law Judge's recommendation for NMFS to commit to and seek funding for beluga studies is underscored.

Response: The current low abundance is reason for concern, and NMFS recognizes that additional funding is necessary to monitor the population and identify and address other factors that may be limiting growth of this small population.

Decision of the Assistant Administrator for Fisheries, NOAA

Pursuant to Section 101(b) of the MMPA, NMFS is authorized to prescribe regulations for any depleted marine mammal species that is taken for subsistence or for creating and selling authentic native articles of handicrafts and clothing. NMFS prescribes the regulations after notice and hearing conducted pursuant to Section 103. NMFS must demonstrate that the regulations and decision are supported by substantial evidence based on the record in this matter.

In his recommended decision issued in 2005, Judge McKenna identified several issues of fact and law. He provided his recommended findings on issues of fact and rulings on issues of law, and his reasoning for these findings and rulings. He also listed six ultimate findings of fact and rulings of law, and the reasons supporting these findings and rulings. In each instance where a specific determination is made, the decision of the ALJ is referenced. In those instances in which NMFS finds the justification supporting the ALJ's recommended decision persuasive and convincing, we have adopted the decision and rationale without further elaboration. Where we differ with the ALJ's recommended decision, or concur but believe that modification of or addition to the ALJ's recommended decision is justified, we have made appropriate determinations. Section 103 of the MMPA requires that NMFS' decision be supported by the evidence on the record and that the evidence be the best scientific evidence available. After reviewing the record, including the 2008 Environmental Impact Statement and its record, it is our conclusion that the decision is well substantiated and based upon the best scientific information available at this time. We have determined that the proposal, procedures, and the decision satisfy the requirements of Section 103 of the MMPA and that the long-term harvest plan will not be to the disadvantage of the marine mammal involved and is otherwise consistent with the policies and purposes of the MMPA. Judge McKenna's findings, rulings, and rationales are summarized below.

Marine Mammal Commission's Standing

Alaska Native parties requested that the Commission be dismissed from the proceedings, but not strike any information or testimony that the Commission has provided thus far. Judge McKenna rejected this request because it was untimely. Although Judge McKenna noted his reservations about the Commission's participation as a party, he acknowledged that no other parties objected to their participation at

the December 2000 hearing or in any submission to the court, including to his order of June 10, 2004. The request for the Commission's dismissal was raised during the final administrative hearing in August 2004.

Deference to NMFS' Proposals

The Commission contested NMFS' argument that its proposed plan was entitled to deference by the court. Judge McKenna ruled that NMFS' proposed plan was not entitled to deference because it was a proposal and had not been adopted by the agency (Assistant Administrator for Fisheries).

Burden of Proof

In response to questions about the burden of proof NMFS must carry in this proceeding, Judge McKenna reasoned that under NMFS' regulations at 50 CFR 228, the hearing is governed by provisions of the Administrative Procedure Act (5 U.S.C. 556 and 557), which provides that a rule may not be issued in this case except in consideration of the record as a whole and in accordance with reliable, probative, and substantial evidence. Judge McKenna noted that the Supreme Court had interpreted the phrase ''substantial evidence'' to mean the preponderance of the evidence. NMFS further notes that the MMPA provides that regulation of subsistence harvest must be supported by ''substantial evidence on the basis of the record as a whole.'' Judge McKenna concluded that NMFS is entitled to have their harvest plan evaluated under the preponderance of the evidence standard.

Harvest Subservient to Recovery

A question debated at length in this proceeding was whether or not subsistence harvest should be allowed if there is no detectable population growth. NMFS argued that subsistence hunts are an integral part of Alaska Native culture, and the MMPA allows restriction of subsistence hunts only under very limited circumstances. Alaska Native representatives noted that subsistence harvest had been strictly curtailed since 1999 and the population had not increased as predicted; therefore, if the population were going to die-out regardless of what anyone does, then the hunters should be allowed to hunt the whales. The Commission noted that the purposes and policies of the MMPA (16 U.S.C. 1361) included as a major goal, that marine mammal populations should not be permitted to diminish below their Optimum Sustainable Population (OSP) and that measures should be immediately taken to replenish any depleted stock. Judge McKenna's ruling on this issue of law stated that subsistence harvest is subservient to recovery of depleted stocks under the MMPA. He reasoned that the MMPA provides that, on the basis of the best scientific evidence available and in consultation with the Commission, NMFS must prescribe regulations regarding the taking and importing of marine mammals as deemed necessary and appropriate, to insure that such taking will not be to the disadvantage of the affected stocks of marine mammals and will be consistent with the MMPA's purposes and policies. Because the MMPA requires regulations on takings so as not to disadvantage the species or stock, subsistence hunting must be subservient to the recovery of a depleted stock.

Population Abundance Threshold

Although the parties agreed that there was an abundance level below which no harvest should be allowed, there was disagreement about what that abundance level should be. NMFS first proposed a threshold of 260 belugas arguing that at such abundance, there was 95 percent confidence that the population would be at least 200 whales. After considering an Allee effect, inbreeding depression, loss of genetic variability, vulnerability to environmental perturbations due to reduced range or reduced population size, and vulnerability to demographic stochasticity, NMFS believed that loss of genetic variability was the most important factor in considering a minimum abundance subject to harvest. NMFS further believed that harvest from a population of less than 200 belugas could represent an irreplaceable loss of genetic diversity in the beluga population. The Commission presented compelling evidence that the minimum abundance should be higher than 260 belugas. Accordingly, NMFS revised this threshold abundance in its second harvest plan proposal to 350 belugas. Tyonek subsequently proposed a threshold of 310 belugas as sufficient protection for the population. Thus, the contested issue was whether to use an abundance estimate of 310 or 350 beluga whales as the threshold below which no harvest could be allowed. After reviewing the evidence, Judge McKenna ruled there was insufficient evidence to support one of these alternatives over the other. He ruled on this issue as a matter of law, reasoning that Congress enacted a moratorium on subsistence harvest other than that conducted through cooperative agreements with NMFS when the population size was about 367 belugas; furthermore, the MMPA required that such taking would not disadvantage the stock. Judge McKenna reasoned that allowing a harvest below the abundance level in 1999 (367 belugas), when Congress enacted its moratorium on the unrestricted harvest of Cook Inlet beluga whales, was not the intent of Congress. Considering that the Cook Inlet beluga abundance estimates are not exact population counts, he concluded that NMFS proposed floor of 350 belugas represented a reasonable reflection of Congressional intent.

Immediate Recovery

Another issue was the recovery rate allowed by the harvest. The Commission argued that the MMPA requires NMFS take immediate action to replenish depleted marine mammal stocks and that Congress' use of the word ''immediate'' indicated that recovery should be achieved as quickly as possible. The Commission noted the parties' agreed-upon principle that the harvest plan provide ''reasonable certainty that the population will recover, within an acceptable period of time, to the point where it is no longer considered to be depleted'' and argued that the terms ''reasonable certainty'' and ''acceptable period of time'' should be quantified as 95 percent certainty that the population recover in 100 years. The Commission acknowledged use of the 95/25 criterion (95 percent certainty that harvest would delay recovery by no more than 25 percent) as a performance standard in NMFS' second proposal, but remained concerned that the proposal would not be appropriately responsive to situations where harvest levels need to be reduced in response to the population trend. NMFS argued that the second proposal contained sufficient safeguards that allow response to population trends. Judge McKenna considered the entire record and found that NMFS' second proposal was supported by a preponderance of the evidence. He noted that given the future uncertainty of the population dynamics of Cook Inlet beluga whales, independent, intervening variables may foreclose a population recovery within 100 years, an outcome that could materialize even in the absence of a harvest. He added that such variability in potential for recovery could render the proposed benchmarks of 95/25 criterion or 100 years as meaningless. After considering the uncertainties about the population's recovery, Judge McKenna noted that NMFS should view ''with a jaundiced eye'' that 100 years is an ''acceptable period of time'' for recovery and that the adoption of a mathematical formula such as the 95/25

criterion should be a goal and not mandatory. Accordingly, he recommended that such criteria be adopted as ''goals'' so that the decision-maker could use his or her best judgment in the future.

Adjusting Harvest for Low Population Growth Rate

In its second proposal, NMFS proposed that subsistence harvest be reduced or eliminated under specific criteria when the population growth rate is negative or abnormally low. The first of these criteria was that the harvest should be stopped if the 5–year average population abundance was below 350 whales. This criterion and findings related to it are discussed above (see *Population Abundance Threshold*). The second and third criteria were (1) that the harvest would be reduced if in 2020 there is more than a 20–percent probability that the population growth rate is less than 1 percent and (2) that the harvest would be stopped if there were more than a 20 percent probability that the population growth rate was less than 1 percent in 2035.

The Commission argued that these criteria would respond too slowly to situations where there is continued low growth; however, NMFS noted that the criteria in its second proposal were part of a plan that strictly limited harvest for low growth rate populations. The Cook Inlet Treaty Tribes (CITT) proposed that the minimum harvest should not be below two whales in any year. Judge McKenna rejected the proposal from CITT because the overwhelming evidence in the record did not support such a proposal. Judge McKenna considered the entire record and supported NMFS' proposed criteria.

Harvest with Small Population and Intermediate Growth Rate

NMFS' second proposal, which incorporated most of Tyonek's proposal, allows the take of five whales over a 5–year interval if the population were growing at an intermediate rate and the 5–year abundance average was between 350 and 399 belugas. Tyonek's proposal argued for eight strikes over a 5–year period with intermediate population growth rates, suggesting that the smaller allowable take in NMFS' proposal would not contribute meaningfully to the population's recovery. NMFS noted that there was a significant likelihood that a population with a 5–year average abundance of 350–399 belugas with an intermediate growth rate would actually be growing at the low rate. Judge McKenna recommended NMFS' proposal because it was intended to insure that the harvest would not disadvantage the Cook Inlet beluga population.

Unusual Mortality Events

Although the parties all agreed there should be a mechanism to reduce the harvest if there were an unusual mortality event, such as a mass stranding in which several whales died, they did not agree on the details governing such a reduction. Most beluga mortalities not related to harvest are reported due to the carcass stranding; therefore, NMFS proposed to use strandings for the basis for normal and unusual mortalities. For any year, NMFS proposed to estimate the actual number of mortalities by expanding the reported number of deaths by a factor of two. An expected number of beluga mortalities may be estimated as a proportion of the population size, and these mortality numbers, for ranges of abundance, are listed under the heading ''Expected Mortality Limit'' in the Harvest Table. If the reported number of deaths in a year exceeds the Expected Mortality Limit, then the difference (Estimated Excess Mortalities) is subtracted from the current 5–year mean abundance, and the harvest levels for the remainder of the 5–year period are recalculated.

Tyonek argued that the expansion factor of two applied to the number of reported deaths was conservative because dead whales in some parts of the inlet would not likely strand and be reported before they drifted out to sea. Tyonek also questioned whether the same factor should be applied to immature beluga mortalities as is applied to adult whales.

Tyonek asserted that before whale deaths were counted, NMFS should consult with the Cook Inlet Marine Mammal Council through a co-management process to agree upon dead beluga whales that are reported by reliable sources but not confirmed by NMFS. Tyonek also suggested that some years may have higher than expected mortalities and some years may have lower than expected mortalities. Therefore, excess mortality should be estimated as a 5–year average rather than as a single year's calculation.

NMFS argued that (1) anecdotal information indicates a substantial fraction of dead beluga whales are unreported, (2) few of the observed mortalities are reported in winter, and (3) there is not sufficient data available to quantify the likelihood that a dead beluga will strand and be reported; therefore, an expansion factor of two is reasonable. NMFS also argued that its method for counting mortalities is not necessarily biased by differing probabilities of an animal stranding or the stranding being reported. Although most strandings are reported in Turnagain Arm, it may be that more deaths occur in or near Turnagain Arm because whales spend much time there when the waters and tides there are most dangerous to whales. NMFS also noted that its interim final harvest regulations reduced harvest directly by the number of excess mortalities, whereas its second proposal applied excess mortalities to the 5–year average abundance and re-estimated harvest levels.

The Commission was concerned that the period since 1999 may have elevated mortality rates, noting that the population has not appeared to grow despite the subsistence harvest restrictions. Thus, mortality may have been unusually high during this period and inappropriate for use as the baseline for normal mortality. The Commission suggested that more research should be conducted to validate the assumptions underlying mortality estimates. NMFS replied that the number of stranded dead whales between 1998 and 2004 remained fairly constant, between 2.6 percent and 4.2 percent of the abundance. This mortality level is below expected mortality rates for most marine mammal populations, therefore, the reported mortality figures are likely not high.

Judge McKenna noted that Tyonek's and the Commission's concerns amounted to a request for better science, but better science is not currently available. Furthermore, Tyonek and the Commission both argued about potential problems, which may or may not materialize, but did not indicate there was better evidence than that used by NMFS. Accordingly, Judge McKenna found that NMFS' proposal was based upon the best available information. He concluded that it was up to NMFS whether to conduct additional research to validate assumptions in its proposal.

Funding for Future Surveys

NMFS noted that annual surveys were important for the harvest regime to function well, but future surveys were subject to annual appropriations and could not be guaranteed. Tyonek argued that NMFS should enter into discussions with the Alaska Native parties and the Commission to review the need for changes to the harvest limits, should the frequency of future surveys decrease. The Commission also raised concerns because reduced survey effort may reduce the ability to detect a population decline. NMFS argued that their harvest plan allowed for abundance surveys every other year, if

such a frequency could meet the information requirements of the harvest regime, and that there is no need to open negotiations whenever annual surveys do not occur.

Judge McKenna noted that the circumstances that affect availability of funds for future surveys are subject to Congressional appropriations, and did not recommend a position on the need for an automatic review of the harvest plan if surveys were less frequent. Noting that all proposals are science-based, he further recommended that it is a matter for NMFS scientists to determine whether population surveys should be conducted annually or every other year.

''On the Ground'' Abundance Estimates

Alaska Native hunters consistently questioned the accuracy of NMFS' population abundance estimates. Tyonek requested that abundance estimates, which are the basis for the harvest limits, include an ''on the ground'' count by hunters. Such counts could validate abundance estimates for some parts of Cook Inlet, and survey methodology could be refined accordingly. NMFS states that such ''on the ground'' surveys were unreliable compared to aerial surveys, which offer a broader visual perspective and provide more robust estimates.

Judge McKenna noted that MMPA section 103(a) (16 U.S.C. 1373(a)) required regulations to be based upon the best available scientific evidence and that testimony during the hearing noted that ''on the ground'' surveys were not as reliable as aerial surveys. He, therefore, found that it would not be appropriate to incorporate a mechanism into the regulation providing for ''on the ground'' counting. He recommended that such counts be incorporated into co-management agreements.

The MMPA requires use of the best available scientific evidence or information in regulating the take of marine mammals or in assessing the status of marine mammal stocks. While information on Cook Inlet belugas obtained by hunting the whales may provide additional insights into beluga whale behavior and distribution where relevant, it does not replace aerial surveys as the best available scientific information and will not be used to validate survey results. However, such information could be used to help improve survey efforts and locations and could be incorporated into co-management agreements. Any changes in survey design resulting from these improvements should be made only with due awareness to the consequence that estimates obtained from such modified surveys may not be comparable to abundance estimates obtained from earlier surveys.

Periodic Review of the Plan

Noting that the harvest plan contains numerous assumptions and uncertainty about the population, Tyonek argued that the plan should be reviewed through the co-management process every ten years. Furthermore, either party should be able to call for a review before the ten year period if (1) new information becomes available that may affected the plan, (2) the harvest falls below one whale per year, or (3) if the harvest stagnates at low levels. NMFS argued that a review every ten years would be overly restrictive and time-consuming, and that the plan was intended to provide harvest levels until the stock was recovered under the MMPA.

Judge McKenna noted that the MMPA requires that subsistence harvest regulations be reviewed periodically. After considering the arguments of both parties, Judge McKenna found that there is no legal requirement to review the harvest plan every ten years, and NMFS should be able to determine whether the plan requires modification without a formal review process. He added, however, that if the harvest falls below one whale per year, NMFS should seriously consider listing the Cook Inlet beluga whale population under the ESA. NMFS has proposed to list this beluga population under the ESA (72 FR 19854, April 20, 2007) and is considering public comment received on this proposal.

Calculating Population Growth Rate

In his recommended decision, Judge McKenna supported NMFS' proposal before the second hearing that the population growth rate should be based upon the probability distribution for the population trend using data from 1994 until the date in which it was to be updated. The Commission had suggested that the population growth rate be calculated over shorter time periods that would more accurately reflect the current status of the beluga stock. In supporting this aspect of NMFS proposal, Judge McKenna noted that NMFS second proposal had not been vetted through cross-examination, and that any technical rationale for using the full data set was not clear to him. He recommended, therefore, that NMFS give serious consideration to the Commission's suggestion to use a shorter (e.g., 5–10–year) period to calculate the population growth rate.

After receiving Judge McKenna's recommended decision, NMFS reconsidered calculating the population growth rate and determined that the long-term harvest limits would use data available for the previous 10 years when using the Harvest Table to set harvest limits for each 5–year period in the future. NMFS second harvest plan established long-term harvest limits, which were supported by Judge McKenna's recommended decision, and would have included the population trend from 1994 to 1998 when the population was subjected to unrestricted hunting. Accordingly, the large decline in the population during these years is not an accurate reflection of population growth under the new harvest regime. Furthermore, the use of data from the previous 10 years would be more responsive to the current and future dynamics of the population and is less likely to result in over- or under-protection.

Technical Team Review of Proposed Rule

The Commission argued that there was insufficient time after receiving NMFS' second proposal to conduct scientific review and advocated that Judge McKenna focus on the principles in the plan rather than the specific numbers or charts proposed by NMFS. The Commission also argued that the Technical Team be given appropriate guidance (criteria) concerning the decision and given additional time to assess whether the proposed harvest regime meets those criteria. NMFS opposed the request to reconvene the Technical Team.

Judge McKenna rejected the Commission's recommendation to refrain from using specific numbers or charts in the harvest plan. He reiterated that NMFS should view values for underlying principles as goals rather than hard-and-fast rules (see Immediate Recovery). Such an approach would permit NMFS maximum flexibility to balance the recovery needs with the needs of the subsistence hunters in establishing the allowable harvests. Although the Commission's request to reconvene the Technical Team would result in a more complete record, the parties all stipulated that the recommended decision be issued without further hearings. Accordingly, he denied the Commission's request to reconvene the Technical Team.

Sex Composition of the Harvest

No proposals included regulations addressing the sex composition of the harvest, although the Commission and NMFS advocated that hunters target males because such an approach would have less effect on the population's

reproductive potential. The Commission requested that the final regulations require NMFS to conduct additional research needed to ascertain the impact of a harvest targeted on males and that the regulations include sufficient flexibility for establishing additional requirements in the future with respect to sex and/or age composition of the harvest. NMFS argued that such a regulation is not appropriate and that the sex and age composition issue should be specified in required co-management agreements.

Judge McKenna noted that the scientific community does not know how many males are needed in one generation to genetically contribute to the next generation, or what breeding or social structure is required by Cook Inlet beluga whales. He also noted that the regulation is for long-term harvest limits and that there is considerable uncertainty about the benefits of adding a provision that addresses sex composition of the harvest. He suggested that adding such a provision to the harvest regulations would increase the chances that the final regulations would have to be modified in the future, which, in turn, would have the entire proceedings repeated. Therefore, he found that any provisions governing the sex composition of the harvest should be left to the co-management agreements. NMFS adopts Judge McKenna's ruling related to inclusion of sex composition of the harvest in co-management agreements for the reasons he stated and because targeting males in the hunt would minimize the taking of reproductively active females in the harvest.

Use of Stranded Whales

Some Alaska Natives requested permission to harvest stranded whales that are going to die anyway. Such harvest would have certain benefits without a cost to the population. Tyonek, however, suggested that such harvest may not be a viable option for all beluga hunters, because weather and inlet conditions could prevent members from reaching Turnagain Arm, where most strandings occur.

Judge McKenna noted that none of the formal proposals to the hearing process included a provision that allowed strikes of stranded whales that are going to die anyway; therefore, he recommended that it was not advisable to include such a provision in the regulations. He also noted there were no scientific criteria to distinguish between whales that were likely to die and those that were likely to survive a stranding. Judge McKenna noted that the issue raised several questions. Who determines when a whale will not survive? Will the whale count one harvest ''take'' for the year? Who will share in the harvest of stranded whales? He noted that these questions are best left to the co-management process, and recommended that NMFS resolve this issue within one year from the date of issuance of the final rule.

NMFS has observed belugas live-strand on mudflats at low tide and swim or float off at high tides, so there is no documentation of accessible belugas that are going to die anyway at a later time. That being said, NMFS finds that stranding response is governed under the MMPA and that, pursuant to the MMPA, NMFS issues letters of authorization to qualified experts who, among other things, judge whether a stranded marine mammal is likely to die. Therefore, if NMFS staff, after consulting with a qualified expert working under such a letter of authorization who responded to a Cook Inlet beluga stranding, determines that a stranded Cook Inlet beluga whale is likely to die and would be euthanized for humane reasons, euthanasia may be accomplished through a means that would not prohibit consumption of edible products from the whale.

Judging whether a beluga whale may die as a result of stranding will be subject to uncertainty. Because the population is currently severely depleted, and, as noted above (see *Harvest Subservient to Recovery*), the Alaska Native subsistence exemption was ruled subservient to the MMPA's recovery goal for depleted marine mammal stocks, any determination that a stranded beluga whale is likely to die as a result of the stranding must be supported by sufficient information so that determination is reasonably certain.

The death of a marine mammal from a stranding is unrelated to the subsistence harvest. Therefore, NMFS finds that taking such a whale should not be counted as a ''strike'' under the harvest limits in this final rule; however, such a death should be added to the stranding database and would, therefore, be added to the unusual levels of mortality (see Unusual Mortality Events), and the harvest could be adjusted if necessary.

A mechanism to share edible portions of stranded beluga whales should be included, as allocation of ''strike'' under the harvest limits should be included, in co-management agreements for each 5–year period. NMFS expects that a reasonable allocation of strikes or shares of stranded whales among the Alaska Native community within Cook Inlet is best resolved through agreements among the affected Alaska Natives. Furthermore, members of the Alaska Native community should base the use of marine mammal products under this harvest plan on historical and traditional use of beluga whales. Therefore, the ANOs involved in co-management agreements under these harvest regulations are expected to resolve questions on allocation or sharing before negotiating such agreements for each 5–year period.

Ultimate Findings of Fact and Conclusions of Law

Judge McKenna's recommended decision also contained ultimate findings of fact and conclusions of law. His ultimate rulings and findings, and the reasons for them, are as follows:

(1) This is a formal rulemaking proceeding commenced pursuant to the authority contained in the MMPA (16 U.S.C. 1361 et. seq.) and the Administrative Procedure Act (5 U.S.C. 556 and 557).

(2) NMFS' second proposed rule is hereby adopted based upon the preponderance of the evidence contained in this record.

(3) NMFS' first proposed rule, Tyonek's first proposed rule, and Tyonek's second proposed rule (to the extent not incorporated into NMFS' second proposal) are hereby rejected. NMFS' first proposal and Tyonek's first proposal are rejected because they were superseded by new proposals. Tyonek's second proposal (to the extent not incorporated into NMFS' second proposal) is hereby rejected based upon the preponderance of the record evidence.

(4) Tyonek's objection to the Commission's standing to participate in this formal rulemaking is untimely and therefore rejected.

(5) NMFS' second proposed rule is supported by the preponderance of the evidence and based on the best scientific evidence available.

(6) Tyonek's second proposed rule (to the extent not incorporated into NMFS' second proposal) is not supported by the preponderance of the evidence because it does not insure that the harvest will not disadvantage the Cook Inlet beluga whale population.

Judge McKenna adopted NMFS' second proposal to the hearing process in its entirety. After receiving his recommended decision, NMFS has received and considered new information since the hearing and based on this information, that proposal is modified in the following respects:

First, NMFS modified its second proposal related to the calculation of the population growth. Judge McKenna recommended, based upon NMFS'

proposal at the hearing, to estimate population growth rate from the entire series of abundance estimates, dating back to 1994. NMFS has modified this recommendation to use only the most recent 10 years of abundance estimates for calculating population growth rate. The three reasons for this modification are as follows (also see *Calculating the Population Growth Rate* for additional discussion of Judge McKenna's recommendation and NMFS' decision):

(1) Judge McKenna noted in his recommended decision that NMFS consider using the Commission's suggestion for a shorter time to calculate population growth rate;

(2) The shorter period would result in a more accurate assessment of current rate of population growth under a regulated harvest because it eliminates a period (1994–1998) of unregulated harvest; and

(3) The shorter period would be more responsive to the current and future dynamics of the population.

NMFS' second modification to the recommended decision is to implement the Harvest Table immediately rather than in 2010. Judge McKenna's recommended decision included, based upon NMFS second proposal, that use of the Harvest Table begin in 2010, allowing a limited harvest of three beluga whales in the 2–year period, 2008 and 2009. NMFS has determined that implementing use of the Harvest Table immediately (starting in 2008) is less likely to disadvantage the population of Cook Inlet beluga whales. At the time of the 2004 hearing on this rule, the population 5–year average abundance exceeded 350 whales although it was suspected, but not confirmed, that the population was continuing to decline even with a limited harvest. Abundance estimates from 2004 and 2005 confirmed that the population was in decline, and the 5–year average abundance was below 350 belugas (the threshold abundance level below which harvest would not be allowed). The 2006 and 2007 abundance estimates were higher than the 2005 estimate, and the declining trend of the population after harvest restrictions were enacted was no longer statistically significantly different from zero. However, the 5–year average abundance (2003–2007) was below 350 whales, and there was no evidence that the population has increased since 1999 when the harvest was first restricted. In his recommended decision, Judge McKenna noted that Congress felt a moratorium on harvest was necessary in 1999 when the abundance was about 350 beluga whales, and he ruled, as a matter of law, that 350 belugas was an appropriate threshold below which a harvest was not allowed. Based on these considerations, NMFS implements the Harvest Table immediately, rather than in 2010. Because the 5–year average abundance is below 350 whales, the allowable harvest during the next 5–year period, 2008–2012, is zero.

Final Rule

This final rule establishes long-term limits to the annual number of Cook Inlet beluga whales that can be taken by Alaska Natives for subsistence and handicraft purposes. The rule completes a provision for such long-term limits that was not finalized when regulations governing the taking of Cook Inlet beluga whales were issued in 2004 (69 FR 17973, April 6, 2004). This final rule establishes only long-term limits and does not modify any other aspect of the 2004 rule (i.e., requirement for co-management agreements, prohibition on sale of Cook Inlet beluga parts, seasonal restriction on taking Cook Inlet beluga whales, and prohibition on taking calves or adults accompanied by calves).

This final rule does not include provisions related to strike allocation for two reasons. First, the purpose of the rule is to establish long-term harvest limits for Cook Inlet beluga whales. Second, the allocation of limited strikes should be an issue determined among the affected ANOs and Alaska Natives. Accordingly, the regulations require allocation issues be addressed in the co-management agreements signed by NMFS and appropriate ANOs, to allow the taking of Cook Inlet beluga whales pursuant to the pertinent provisions of Public Law 106–55 and implementing regulations (50 CFR 216.23(f)(1)).

The harvest limits in this final rule are established for 5–year periods and are displayed in a Harvest Table that was drafted by NMFS and subjected to judicial review through an administrative hearing. The use of 5–year intervals was agreed upon by the parties in the hearing process and was, thus, not among the contested issues. The key requirements for selecting the harvest levels for each 5–year period are (1) the prior 5–year average abundance estimates of Cook Inlet beluga whales, (2) the prior 10–year growth rate, and (3) the total Unusual Mortality Events for Cook Inlet belugas, from sources other than subsistence harvest.

The current 5–year population average is the abundance calculated using peer-reviewed methods, from surveys conducted by, or under the direction of, NMFS scientists, from the five years prior to the start of a 5–year interval. Although NMFS anticipates annual surveys (therefore, five abundance estimates to be used to calculate of current 5–year population average), future effort depends upon funding appropriations for each year, and availability of future appropriations is not certain. Such surveys are a high priority for NMFS particularly while the population is below 500 whales; is growing slowly, if at all; and is proposed to be listed as an endangered species under the ESA. The use of a 5–year average abundance was not among the contested issues during the hearing process.

The population growth rate is estimated using information obtained in the 10 years prior to each 5–year interval. As noted above (see Decision of the Assistant Administrator), the use of abundance estimates from the most current 10–year period was among the contested issues during the hearing process. This estimate of the population growth rate is a modification of Judge McKenna's recommended decision, which was, in turn, based upon NMFS' proposal to the administrative hearing. However, in his recommended decision, Judge McKenna encouraged NMFS to consider the use of a short period (e.g., 5–10 years) so that the estimate of population growth is most recent.

NMFS scientists will recommend the use of a low, intermediate, or high population growth rate to be used in the model. This recommendation will be based upon criteria included in the final rule that were designed to ensure, with reasonable certainty, that any allowed harvest mortality not prevent the beluga population from recovering to its OSP within an acceptable period. ''Reasonable certainty'' and ''acceptable period'' were interpreted as having a goal (but not a hard-and-fast requirement) of being 95 percent confident the harvest would delay the Cook Inlet beluga recovery, to its OSP, by no more than 25 percent of the time the population would recover in the absence of a harvest. These assurances are consistent with the MMPA's goal of immediate recovery for depleted marine mammal stocks, yet allow a small, but important, harvest by Alaska Natives for subsistence or handicraft purposes as a part of their culture.

The relative importance of recovery versus the subsistence use of Cook Inlet belugas was among the contested issues at the administrative hearing, and Judge McKenna ruled that subsistence use was subservient to recovery of the depleted stock under the MMPA.

After calculating the 5–year average abundance and determining whether the current population growth rate was low, intermediate, or high, the number of strikes will be determined from the

Harvest Table included in the harvest regulations, which is in the appropriate row for the 5–year population average and under the appropriate column for the population growth rate. If beluga mortality levels are below the Expected Mortality Limit, during the 5–year interval, the strike limit will remain fixed for the duration of the 5–year interval. If, however, mortality exceeds the Expected Mortality Limit during the 5–year interval, the strike level may be reduced to account for the smaller beluga population. Although all parties in the hearing process agreed that an adjustment for unusual mortality levels was necessary, the details for computing the necessary adjustment were contested.

The adjustment for Unusual Mortality Levels is calculated using an estimate of annual mortality for Cook Inlet beluga whales (other than subsistence harvest), the 5–year-average abundance estimate, and an expected level of mortality for a population with life history traits such as those for beluga whales. For the annual mortality estimate, NMFS multiplies the reported number of stranded, dead Cook Inlet beluga whales reported in a year by a factor of two. NMFS determined that correction factor on the reported number of beluga deaths was warranted, because a certain, but unknown, portion of beluga whales that die during a year do not strand or such strandings are not reported.

The estimated number of deaths is compared to an expected mortality level for a population at the 5–year average population for the beluga whale population during that 5–year interval. The expected mortality level is 6 percent of the lower limit of the abundance range in each row in the Harvest Table; animal populations with life history traits like beluga whales may be expected to lose up to 6 percent of the population due to 'natural' mortality on an annual basis.

Excess mortalities are calculated as the difference between the estimated number of deaths in a year and the expected mortality level. If excess mortalities occur in any year during a 5–year interval, the number of excess mortalities will be subtracted from the 5–year-mean average abundance. If such a subtraction reduces the 5–year-average abundance to a lower range in the Harvest Table, the 5–year strike limit will be reduced accordingly for the remainder of that 5–year interval. For the next 5–year interval, the abundance estimates for that year (or years) in which excess mortalities occur will be reduced by the number of excess mortalities in that year. The reduced abundance estimate would be averaged in the 5–year average abundance estimate for the upcoming 5–year interval. Although parties in the administrative hearing process contested the details of this adjustment, Judge McKenna found that this method, which was included in NMFS' second proposal, was supported by the preponderance of evidence on the record.

This final rule for establishing 5–year harvest limits for Cook Inlet beluga whales was prepared in accordance with provisions of the MMPA sections 101(b) and 103. Judge McKenna found, and NMFS concurred with his finding, that taking Cook Inlet beluga whales under these limits by Alaska Natives for subsistence purposes would not disadvantage the Cook Inlet beluga stock. Such limited taking would allow Alaska Natives to continue taking Cook Inlet beluga whales for subsistence purposes and would provide reasonable certainty that such taking would mean an acceptable delay in the recovery of the stock to its OSP.

Classification

National Environmental Policy Act

On June 20, 2008, NMFS released a Final SEIS that analyzed a range of alternatives to manage a subsistence harvest and promote the whale's recovery. NMFS' primary management action is to establish an upper limit on the number of Cook Inlet beluga whales that can be taken by Alaska Natives for subsistence and handicraft purposes. The harvest alternatives and their environmental impacts were evaluated in the SEIS through a model that examined the length of time it would take for the stock to recover under different harvest alternatives. The preferred alternative provided for the cultural needs of Alaska Natives by allowing a harvest when the population has a 5–year abundance average above 350 belugas. The harvest level is based on the 5–year abundance average and 10 year trend analysis, with an increase in the harvest as the population increases and a decrease in the harvest when the population decreases; and no harvest below a 5–year average of 350 belugas. The Final SEIS also presented an assessment on the impacts of other anthropogenic activities that might impact Cook Inlet beluga whales or their habitat. This assessment included a discussion of the cumulative impacts and evaluated the measures needed for the protection and conservation of important Cook Inlet beluga whale habitats.

A total of 60 submissions were received from 63 people on the Draft SEIS, including 40 submitted by residents from the Native Village of Tyonek as a form letter. Three people submitted one letter jointly. Most commenters (78 percent) indicated support for Alternative 2, Option B, the preferred alternative. Six people (11 percent) preferred no harvest. No comments were received on Alternative 2A, which followed Judge McKenna's decision, or on Alternative 3, the Progressive Harvest alternative.

Paperwork Reduction Act

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1980.

Endangered Species Act (ESA)

This final rule does not affect species listed under the ESA and whose distribution primarily includes the lower part of Cook Inlet, where the subsistence harvest for belugas no longer occurs. These species include humpback and fin whales, the western Distinct Population Segment of Steller sea lions, the southwest Alaska Distinct Population Segment of northern sea otters, and Steller's eider. Therefore, this final rulemaking does not impact any ESA listed species, or their critical habitat. NMFS determined that this final rule provides reasonable assurance that the harvest would not cause a significant delay in recovery of the Cook Inlet beluga population. Accordingly, the harvest limits in this rule would not jeopardize the continued existence of Cook Inlet beluga whales, and a conference pursuant to ESA section 7(a)(4) was not conducted.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for purposes of Executive Order 12866. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule, final interim rule, and NEPA documents. No comments were received regarding the economic impact of this final rule. A final regulatory flexibility analysis is not required, and none was prepared.

Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Section 4–4, Subsistence Consumption of Fish and Wildlife

Section 4–4, Executive Order 12898, requires Federal agencies to protect populations who consume fish and wildlife as part of their subsistence lifestyle, and to communicate to the public the potential health risks [from contaminants] involved as a result of eating fish and wildlife. NMFS has monitored and evaluated contaminant loads in Cook Inlet and eastern Chukchi Sea beluga populations in Alaska for more than a decade and has published this information and provided this information to the Alaska Department of Health and Social Service, and to Alaska Native communities, as this information becomes available.

Consultation with State and Local Government Agencies

In keeping with the intent of Executive Order 13132 to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, NMFS has conferred with state and local government agencies in the course of assessing the status of Cook Inlet beluga whales. State and local governments support the conservation of this beluga stock. NMFS has convened scientific workshops and public meetings, available to all the public, and has routinely exchanged information on the status of these whales with state and local agencies, and Tribal Governments.

Executive Order 13175–Consultation and Coordination with Indian Tribal Governments and Corporations

This final rule is consistent with policies and guidance established in Executive Order 13175 of November 6, 2000 (25 U.S.C. 450 note) and the Executive Memorandum of April 29, 1994, (25 U.S.C. note), and the American Indian and Alaska Native Policy of the United States Department of Commerce (March 30, 1995) outline the responsibilities of the National Marine Fisheries Service in matters affecting tribal interests. Section 161 of Public Law 108–199 (188 Stat. 452), as amended by section 518 of Public Law 108–447 (118 Stat. 3287), extends consultation requirements of E.O. 13175 to Alaska Native corporations. Consistent with this Executive Order and the Presidential Memorandum, NMFS has taken several steps to consult and inform affected tribal governments and corporations and to solicit their input during development of this rule, including the development of co-management agreements with Cook Inlet Marine Mammal Council. The final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments or corporations.

List of Subjects in 50 CFR Part 216

Administrative practice and procedures, Exports, Imports, Marine mammals, Transportation.

Dated: October 8, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons identified in the preamble, 50 CFR Part 216 is amended as follows:

PART 216–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361, *et seq.*, unless otherwise noted.

■ 2. In § 216.23, paragraph (f)(2)(v) is revised to read as follows:

§ 216.23 Native exceptions.

* * * * *

(f) * * *

(2) * * *

(v) *Taking during 2008 and subsequent years.* (A) Co-management agreements pursuant to paragraph (f)(1) of this section may be established for 5–year intervals beginning in 2008. Agreements must include specific provisions regarding the number and allocation of strikes, hunting practices to promote consistency with limitations in paragraph (f)(2)(ii) of this section, and to improve efficiency of the harvest, mitigating measures, and enforcement. Agreements may include provisions regarding the sex composition of the beluga harvest.

(B) Strike/harvest levels for each 5–year planning interval beginning in 2008 will be determined by the recovery of this stock as measured by the average abundance in the prior 5–year interval and the best estimate of the population growth rate using information obtained in the 10 years prior to each 5–year interval. Criteria for categorizing growth rates are presented below as an algorithm using the estimated abundance, the distribution statistics for growth rates, and the date. Harvest levels are subject to the Expected Mortality Limit. The established strike levels are presented in the Harvest Table and the following algorithm will be used to determine harvest levels for each 5–year period beginning in 2008.

(*1*) NMFS will calculate the average stock abundance over the previous 5–year period.

(*2*) NMFS will calculate a population growth rates from abundance estimates for the most recent 10–year period prior to the next 5–year period.

(*3*) Using the abundance and growth information obtained in accordance with paragraphs (f)(2)(v)(B)(*1*) and (f)(2)(v)(B)(*2*), NMFS will calculate the probabilities that the growth rate within the population would be less than 1 percent, less than 2 percent, or greater than 3 percent. NMFS will then use paragraphs (f)(2)(v)(B)(*3*(*i*)) and (f)(2)(v)(B)(*3*)(*vi*) of this section to select the proper cell from the Harvest Table to determine the harvest levels for the next 5–year interval.

(*i*) Is the average stock abundance over the previous 5–year period less than 350 beluga whales? If yes, the Harvest Table provides that the harvest is zero during the next 5–year period. If no, go to (f)(2)(v)(B)(*3*)(*ii*) of this section.

(*ii*) Is the current year 2035 or later and is there more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is zero during the next 5–year period. If no, go to paragraph (f)(2)(v)(B)(*3*)(*iii*) of this section.

(*iii*) Is the current year between 2020 and 2034 and there is more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is three whales during the next 5–year period. If no, go to paragraph (f)(2)(v)(B)(*3*)(*iv*) of this section.

(*iv*) Is the current year 2015 or later and is there more than a 25 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the ''Low'' growth rate column. If no, go to paragraph (f)(2)(v)(B)(*3*)(*vi*)) of this section.

(*v*) Is the current year prior to 2015 and is there more than a 75 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the ''Low'' growth rate column. If no, go to paragraph (f)(2)(v)(B)(*3*)(*vi*) of this section.

(*vi*) Is there more than a 25–percent probability the growth rate is more than 3 percent? If yes, go to the harvest table using the ''High'' growth rate column. If no, go to the harvest table using the ''Intermediate'' growth rate column.

HARVEST TABLE

5–year population averages	"High" growth rate	"Intermediate" growth rate	"Low" growth rate	Expected Mortality Limit
Less than 350	0	0	0	-
350–399	8 strikes in 5 years	5 strikes in 5 years	5 strikes in 5 years	21
400–449	9 strikes in 5 years	8 strikes in 5 years	5 strikes in 5 years	24
450–499	10 strikes in 5 years	8 strikes in 5 years	5 strikes in 5 years	27
500–524	14 strikes in 5 years	9 strikes in 5 years	5 strikes in 5 years	30
525–549	16 strikes in 5 years	10 strikes in 5 years	5 strikes in 5 years	32
550–574	20 strikes in 5 years	15 strikes in 5 years	5 strikes in 5 years	33
575–599	22 strikes in 5 years	16 strikes in 5 years	5 strikes in 5 years	35
600–624	24 strikes in 5 years	17 strikes in 5 years	6 strikes in 5 years	36
625–649	26 strikes in 5 years	18 strikes in 5 years	6 strikes in 5 years	38
650–699	28 strikes in 5 years	19 strikes in 5 years	7 strikes in 5 years	39
700–779	32 strikes in 5 years	20 strikes in 5 years	7 strikes in 5 years	42
780 +	Consult with co-managers to expand harvest levels while allowing for the population to grow			

(C) At the beginning of each 5–year period, an Expected Mortality Limit is determined from the Harvest Table using the 5–year average abundance. During the course of each calendar year, the number of beach casts carcasses and carcasses found floating either reported to NMFS or observed by NMFS personnel will be the number of mortalities for that year. If at the end of each calendar year this number exceeds the Expected Mortality Limit, then an unusual mortality event has occurred. The Estimated Excess Mortalities will be calculated as twice the number of reported dead whales above the Expected Mortality Limit. The harvest will then be adjusted as follows:

(*1*) The harvest level for the remaining years of the current 5–year period will be recalculated by reducing the 5–year average abundance from the previous 5–year period by the Estimated Excess Mortalities. The revised abundance estimate would then be used in the harvest table for the remaining years and the harvest adjusted accordingly.

(*2*) For the subsequent 5–year period, for the purpose of calculating the 5–year average, the Estimated Excess Mortalities would be subtracted from the abundance estimates of the year of the excess mortality event so that the average would reflect the loss to the population. This average would then be used in the table to set the harvest level.

[FR Doc. E8–24511 Filed 10–14–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071212833–8179–02]

RIN 0648–XK90

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

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

ACTION: Temporary rule; inseason quota transfer.

SUMMARY: NMFS announces that the State of Florida is transferring commercial bluefish quota to the State of New York from its 2008 quota. By this action, NMFS adjusts the quotas and announces the revised commercial quota for each state involved.

DATES: Effective Ocotber 9, 2008 through December 31, 2008.

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

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

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

Florida has agreed to transfer 100,000 lb (45,359 kg) of its 2008 commercial quota to New York. The Regional Administrator has determined that the criteria set forth in § 648.160(f)(1) have been met. The revised bluefish quotas for calendar year 2008 are: New York,

947,057 lb (429,578 kg); and Florida, 673,748 lb (305,607 kg).

Classification

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

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

Dated: October 8, 2008.

Emily H. Menashes,

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

[FR Doc. E8–24415 Filed 10–9–08; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080225278–81191–02]

RIN 0648–AS96

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 14; Essential Fish Habitat Descriptions for Pacific Salmon

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Essential Fish Habitat (EFH) identifications and descriptions for Pacific salmon included in Amendment 14 to the Pacific Salmon Fishery Management Plan (Salmon FMP). This final rule codifies the EFH identifications and descriptions for freshwater and marine habitats of Pacific salmon managed under the Salmon FMP, including Chinook, coho, and pink salmon. This action is necessary to comply with an order issued by the U.S. District Court for the District of Idaho which directed NMFS to codify the EFH identifications and descriptions contained in Amendment 14 to the Salmon FMP.

DATES: Effective November 14, 2008.

ADDRESSES: Copies of the Record of Decision, the Final Supplemental Environmental Impact Statement, and Amendment 14 to the Salmon FMP are available at *www.nwr.noaa.gov* or from D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, phone: 206–526–6150.

FOR FURTHER INFORMATION CONTACT: Steve Copps (Northwest Region, NMFS), 206–526–6140; fax: 206–526–6736.

SUPPLEMENTARY INFORMATION:

The Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act) authorizes the Secretary of Commerce (Secretary) to regulate domestic fisheries within the 200–mile U.S. Exclusive Economic Zone (EEZ) (16 U.S.C. 1811, 1853). Conservation and management of fish stocks is accomplished through Fishery Management Plans (FMPs). Eight regional fishery management councils develop FMPs and amendments to those plans for fisheries within their jurisdiction (16 U.S.C. 1853). To be effective, FMPs and FMP amendments developed by the councils must be approved by the Secretary and then implemented through regulation (16 U.S.C. 1854). More information on the FMP process can be found at 16 U.S.C. 1851–1854.

Essential Fish Habitat

The Magnuson–Stevens Act, originally enacted in 1976, has been amended several times. In 1996, the Sustainable Fisheries Act (SFA) amended the Magnuson–Stevens Act adding provisions intended to end overfishing and rebuild overfished fisheries, reduce bycatch, and assess and minimize the impacts of management measures on fishing communities. Congress articulated in its findings that one of the greatest long–term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States (16 U.S.C. 1801(a)(9)). In making such findings, Congress declared one of the purposes of the Magnuson–Stevens Act to be the promotion of ''the protection of [EFH] in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat'' (16 U.S.C. 1801(b)(7)). To ensure habitat considerations receive increased attention for the conservation and management of fishery resources, the amended Magnuson–Stevens Act required each existing, and any new, FMP to: describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 1855(b)(1)(A) of this title; minimize to the extent practicable adverse effects on such habitat caused by fishing; and, identify other actions to encourage the conservation and enhancement of such habitat (16 U.S.C. 1853(a)(7)). ''EFH'' is defined in the Magnuson–Stevens Act as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity'' (16 U.S.C. 1802(10)).

The EFH regulations (50 CFR 600.815) establish additional guidance to the councils on how to identify and describe EFH. The regulations indicate that councils should obtain information to describe and identify EFH from the best available sources, including peer reviewed literature, unpublished scientific reports, data files of government resource agencies, fisheries landing reports, and other sources of information.

The regulations identify four classification levels to organize available information relevant to EFH identifications and descriptions. Level 1 information is limited to species distributional data; level 2 information includes habitat–related densities; level 3 includes growth, reproduction or survival rates within habitats; and level 4 consists of production rates by habitat. Councils are encouraged to identify and describe EFH based on the highest level of detail (i.e., level 4). The EFH regulations (50 CFR 600.815, subpart J) provide a complete description of each of these levels as well as guidance on how the councils should analyze the available information.

To establish EFH, the regulations advise the councils to interpret the available information in a ''risk–averse fashion to ensure adequate areas are identified as EFH for managed species'' (50 CFR 600.815(a)(1)(iv)(A)). For Pacific salmon, the Pacific Fishery Management Council (Pacific Council) obtained information at all four levels for certain freshwater areas, and the first three levels of information for the estuaries; only the first level of information was available for marine areas.

Amendment 14 to the Pacific Salmon Fishery Management Plan

The Secretary approved the Salmon FMP under the Magnuson–Stevens Act, (16 U.S.C. 1801 *et seq.*), in 1978. The Pacific Council has amended the Salmon FMP 14 times since 1978. The Pacific Council identified and described EFH for Pacific Salmon in Amendment 14 to the Salmon FMP and submitted it on June 12, 2000 for Secretarial review. Following a public comment period, the Secretary approved Amendment 14 on September 27, 2000. NMFS codified some, but not all, components of Amendment 14. The Pacific Salmon EFH descriptions and identifications, however, were not codified.

In September of 2003, the U.S. District Court for the District of Idaho (Court) (Case No. CV02–C–EJL) held that the

EFH identifications and descriptions for Pacific salmon included in Amendment 14 constitute a substantive rule under the Administrative Procedure Act (APA), 5 U.S.C. 553 *et seq.* The Court remanded Amendment 14's EFH Pacific Salmon designations to NMFS and ordered that it undertake notice and comment rulemaking to codify the EFH identifications and descriptions. To comply with the Court's order, NMFS published a proposed rule to codify EFH for Pacific salmon on April 20, 2007 (72 FR 19862). Public comments for this action were received through July 19, 2007.

This final rule codifies the EFH identifications and descriptions for freshwater and marine habitats of Pacific salmon managed under the Salmon FMP for Chinook (*Oncorhynchus tshawytscha*), coho (*O. kisutch*), and Puget Sound pink (*O. gorbuscha*) salmon in Washington, Oregon, Idaho and California.

Changes from the Proposed Rule

NMFS made minor, non–substantive changes to the proposed rule to improve the clarity and accuracy of the regulations. Such changes include corrections to United States Geological Survey Hydrological Unit Codes identified in the regulations, deletion of confusing and unnecessary language regarding the extent of the U.S. Exclusive Economic Zone, as well as revisions to correct grammatical and spelling errors.

Comments and Responses

NMFS received one comment on the proposed rule.

Comment: The U.S. Department of Interior commented that the following three Bureau of Reclamation dams should be included in table 1 of the proposed regulations as impassable man–made barriers and thereby function as the upstream extent of EFH: Bumping Lake Dam on the Bumping River (HUC 17090002); McKay Dam on McKay Creek in the Umatilla River basin (HUC 17070103); and Emigrant Dam on Emigrant Creek in the Middle Rogue River basin (HUC 17100308).

In addition, the U.S. Department of Interior noted that the proposed rule would identify EFH for coho salmon in the Lower Deschutes River (HUC 17070306) and commented that based on NOAA Technical Memorandum NMFS–NWRSC–66 entitled ''Updated Status of Federally Listed ESUs of West Coast Salmon and Steelhead,'' coho salmon did not historically, and do not presently, occur in the Deschutes River Basin.

Response: NMFS acknowledges DOI's comments. NMFS will provide DOI's comments to the Pacific Council for its consideration in the full EFH review required under 50 CFR 600.815(a)(10). During this review, the Council and NMFS will consider what changes to make to EFH in the FMP and will initiate the appropriate plan amendment process. Until this process is complete, NMFS will consider the information provided by DOI in any EFH consultations that may become necessary.

Classification

The NMFS Northwest Region completed an ESA section 7 consultation on November 18, 1999, on the effects of Amendment 14 on listed salmon evolutionarily significant units. Amendment 14 does not by itself authorize any fishing or other activity that would result in adverse effects to listed fish or designated critical habitat. Based on this and other considerations, NMFS concluded that Amendment 14 and its implementing regulations are not likely to adversely affect listed salmon or their critical habitat. This rule is consistent with the determination in Amendment 14 that the action does not jeopardize the continued existence of ESA listed salmon.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulations of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification or the economic impacts of the rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 8, 2008.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS is amending 50 CFR part 660 as follows:

Part 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. Section 660.412 is added under subpart H to read as follows:

§ 660.412 EFH identifications and descriptions for Pacific salmon.

Pacific salmon essential fish habitat (EFH) includes all those water bodies occupied or historically accessible in Washington, Oregon, Idaho, and California in hydrologic units identified in Table 1 of this subpart H. Exceptions include cases in which man–made barriers (dams) identified in Table 1 of this subpart H represent the upstream extent of Pacific salmon access. EFH also includes the marine and estuarine areas shoreward of state boundaries and the Exclusive Economic Zone (EEZ) off the coasts of California, Oregon, and Washington State. To clearly identify watersheds that contain EFH, NMFS uses fourth field hydrologic unit codes (HUCs) developed by the U.S. Geological Survey (USGS) (defined in the Department of the Interior, USGS publication; Hydrologic Unit Maps, Water Supply Paper 2294, 1987). The geographic extent of HUCs range from first field (largest geographic extent) to sixth field (smallest geographic extent). Fourth field HUCs divide the landscape into distinct geographic areas that are identified by eight numbers unique to that hydrologic unit.

(a) Chinook salmon (*Oncorhynchus tshawytscha*) EFH includes all streams, estuaries, marine waters, and other water bodies occupied or historically accessible to Chinook salmon in Washington, Oregon, Idaho, and California, in hydrologic units identified in Table 1 of this subpart H. Exceptions include cases in which man–made barriers (dams) identified in Table 1 of this subpart H represent the upstream extent of Pacific salmon access. EFH also includes the marine and estuarine areas shoreward of state boundaries and the EEZ off the coasts of Washington, Oregon, and California north or Point Conception.

(b) Coho salmon (*Oncorhynchus kisutch*) EFH includes all streams, estuaries, marine waters, and other water bodies occupied or historically accessible to coho in Washington, Oregon, Idaho, and California, in hydrologic units identified in Table 1 of this subpart H. Exceptions include cases in which man–made barriers (dams) identified in Table 1 of this subpart H represent the upstream extent of Pacific

salmon access. EFH also includes the marine and estuarine areas shoreward of state boundaries and the EEZ off the coasts Washington, Oregon, and California north of Point Conception.

(c) Pink salmon (*Oncorhynchus gorbuscha*) EFH includes all streams, estuaries, marine waters, and other water bodies occupied or historically accessible to pink salmon within Washington State, in hydrologic units identified in Table 1 of this subpart H. Exceptions include cases in which man–made barriers (dams) identified in Table 1 of this subpart H represent the upstream extent of Pacific salmon access. EFH also includes waters north and east of Cape Flattery, Washington, including Puget Sound, the Strait of Juan de Fuca and Strait of Georgia.

■ 3. Table 1 to part 660, subpart H, is added to read as follows:

TABLE 1 TO PART 660, SUBPART H—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)

USGS HUC	State(s)	Hydrologic Unit Name	Salmon Species	Impassible Man–made Barrier (if present)
17110001	WA	Fraser (Whatcom)	Coho salmon	n/a
17110002	WA	Strait of Georgia	Chinook, coho, and pink salmon	n/a
17110003	WA	San Juan Islands	Chinook, coho, and pink salmon	n/a
17110004	WA	Nooksack River	Chinook, coho, and pink salmon	n/a
17110005	WA	Upper Skagit	Chinook, coho, and pink salmon	Gorge Lake Dam
17110006	WA	Sauk River	Chinook, coho, and pink salmon	n/a
17110007	WA	Lower Skagit River	Chinook, coho, and pink salmon	n/a
17110008	WA	Stillaguamish River	Chinook, coho, and pink salmon	n/a
17110009	WA	Skykomish River	Chinook, coho, and pink salmon	n/a
17110010	WA	Snoqualmie	Chinook, coho, and pink salmon	Tolt Dam (S. Fork Tolt R.)
17110011	WA	Snohomish River	Chinook, coho, and pink salmon	n/a
17110012	WA	Lake Washington	Chinook and coho salmon	Cedar Falls (Masonry) Dam (Cedar R.)
17110013	WA	Duwamish River	Chinook and coho salmon	n/a
17110014	WA	Puyallup River	Chinook, coho, and pink salmon	n/a
17110015	WA	Nisqually River	Chinook, coho, and pink salmon	n/a
17110016	WA	Deschutes River	Chinook and coho salmon	n/a
17110017	WA	Skokomish River	Chinook and coho salmon	n/a
17110018	WA	Hood Canal	Chinook, coho, and pink salmon	n/a
17110019	WA	Puget Sound	Chinook, coho, and pink salmon	n/a
17110020	WA	Dungeness – Elwha	Chinook, coho, and pink salmon	n/a
17110021	WA	Hoko – Crescent	Chinook and coho salmon	n/a
17100101	WA	Hoh – Quillayute	Chinook and coho salmon	n/a
17100102	WA	Queets – Quinault	Chinook and coho salmon	n/a

TABLE 1 TO PART 660, SUBPART H—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)—Continued

USGS HUC	State(s)	Hydrologic Unit Name	Salmon Species	Impassible Man–made Barrier (if present)
17100103	WA	Upper Chehalis River	Chinook and coho salmon	n/a
17100104	WA	Lower Chehalis River	Chinook and coho salmon	n/a
17100105	WA	Grays Harbor	Chinook and coho salmon	n/a
17100106	WA	Willapa Bay	Chinook and coho salmon	n/a
17080001	OR/WA	Lower Columbia–Sandy River	Chinook and coho salmon	Impassable Man–made Barrier
17080002	WA	Lewis River	Chinook and coho salmon	n/a
17080003	OR/WA	Lower Columbia – Clatskanie River	Chinook and coho salmon	n/a
17080004	WA	Upper Cowlitz River	Chinook and coho salmon	n/a
17080005	WA	Cowlitz River	Chinook and coho salmon	n/a
17080006	OR/WA	Lower Columbia	Chinook and coho salmon	n/a
17090001	OR	Middle Fork Willamette River	Chinook salmon	Dexter Dam
17090002	OR	Coast Fork Willamette River	Chinook salmon	Dorena Dam
17090003	OR	Upper Willamette River	Chinook and coho salmon	n/a
17090004	OR	McKenzie River	Chinook and coho salmon	Cougar Dam
17090005	OR	N. Santiam River	Chinook and coho salmon	Big Cliff Dam
17090006	OR	S. Santiam River	Chinook and coho salmon	n/a
17090007	OR	Mid. Willamette River	Chinook and coho salmon	n/a
17090008	OR	Yamhill River	Chinook and coho salmon	n/a
17090009	OR	Molalla – Pudding River	Chinook and coho salmon	n/a
17090010	OR	Tualatin River	Chinook and coho salmon	n/a
17090011	OR	Clackamas River	Chinook and coho salmon	Oak Grove Dam
17090012	OR	Lower Willamette River	Chinook and coho salmon	n/a
17070101	OR/WA	Mid. Columbia – Lake Wallula	Chinook and coho salmon	n/a
17070102	OR/WA	Walla Walla River	Chinook salmon	n/a
17070103	OR	Umatilla River	Chinook salmon	n/a
17070104	OR	Willow	Chinook salmon	n/a
17070105	OR/WA	Mid. Columbia – Hood	Chinook and coho salmon	n/a
17070106	WA	Klickitat River	Chinook and coho salmon	n/a
17070301	OR	Upper Deschutes River	Chinook salmon	n/a
17070305	OR	Lower Crooked River	Chinook salmon	Opal Springs Dam
17070306	OR	Lower Deschutes River	Chinook and coho salmon	n/a
17070307	OR	Trout Creek	Chinook and coho salmon	n/a
17070201	OR	Upper John Day River	Chinook salmon	n/a

TABLE 1 TO PART 660, SUBPART H—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)—Continued

USGS HUC	State(s)	Hydrologic Unit Name	Salmon Species	Impassible Man–made Barrier (if present)
17070202	OR	North Fork John Day River	Chinook salmon	n/a
17070203	OR	Middle Fork John Day River	Chinook salmon	n/a
17070204	OR	Lower John Day River	Chinook salmon	n/a
17030001	WA	Upper Yakima River	Chinook and coho salmon	Keechelus Dam Kachess Dam (Kachess R.) Cle Elum Dam (Cle Elum R.)
17030002	WA	Naches River	Chinook and coho salmon	Rimrock Dam (Tieton R.)
17030003	WA	Lower Yakima River	Chinook and coho salmon	n/a
17020005	WA	Columbia River	Chinook and coho salmon	Chief Joseph Dam
17020006	WA	Okanogan River	Chinook salmon	n/a
17020007	WA	Similkameen	Chinook salmon	n/a
17020008	WA	Methow River	Chinook and coho salmon	n/a
17020010	WA	Upper Columbia – Entiat River	Chinook and coho salmon	n/a
17020011	WA	Wenatchee River	Chinook and coho salmon	n/a
17020016	WA	Upper Columbia – Priest Rapids	Chinook and coho salmon	n/a
17060101	OR/ID	Hells Canyon	Chinook salmon	Hells Canyon Complex (Hells Canyon, Oxbow, and Brownlee Dams)
17060102	OR	Imnaha River	Chinook salmon	n/a
17060103	OR/WA/ID	Lower Snake – Asotin Creek	Chinook and coho salmon	n/a
17060104	OR	Upper Grande Ronde	Chinook and coho salmon	n/a
17060105	OR	Wallowa River	Chinook and coho salmon	n/a
17060106	OR/WA	Lower Grande Ronde	Chinook and coho salmon	n/a
17060107	WA	Lower Snake – Tucannon River	Chinook and coho salmon	n/a
17060110	WA	Lower Snake River	Chinook and coho salmon	n/a
17060201	ID	Upper Salmon River	Chinook salmon	n/a
17060202	ID	Pahsimeroi River	Chinook salmon	n/a
17060203	ID	Mid. Salmon – Panther River	Chinook salmon	n/a
17060204	ID	Lemhi River	Chinook salmon	n/a
17060205	ID	Upper Middle Fork Salmon River	Chinook salmon	n/a
17060206	ID	Lower Middle Fork Salmon River	Chinook salmon	n/a

TABLE 1 TO PART 660, SUBPART H—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)—Continued

USGS HUC	State(s)	Hydrologic Unit Name	Salmon Species	Impassible Man–made Barrier (if present)
17060207	ID	Mid. Salmon – Chamberlain	Chinook salmon	n/a
17060208	ID	S.F. Salmon River	Chinook salmon	n/a
17060209	ID	Lower Salmon River	Chinook salmon	n/a
17060210	ID	Little Salmon River	Chinook salmon	n/a
17060301	ID	Upper Selway River	Chinook salmon	n/a
17060302	ID	Lower Selway River	Chinook salmon	n/a
17060303	ID	Lochsa River	Chinook salmon	n/a
17060304	ID	M.F. Clearwater River	Chinook salmon	n/a
17060305	ID	S.F. Clearwater River	Chinook salmon	n/a
17060306	WA/ID	Clearwater River	Chinook and coho salmon	Dworshak Dam (at border of HUCs 17060306 and 17060308)
17100201	OR	Necanicum River	Chinook and coho salmon	n/a
17100202	OR	Nehalem River	Chinook and coho salmon	n/a
17100203	OR	Wilson – Trask – Nestucca	Chinook and coho salmon	n/a
17100204	OR	Siletz–Yaquina River	Chinook and coho salmon	n/a
17100205	OR	Alsea River	Chinook and coho salmon	n/a
17100206	OR	Siuslaw River	Chinook and coho salmon	n/a
17100207	OR	Siltcoos River	Chinook and coho salmon	n/a
17100301	OR	N. Umpqua River	Chinook and coho salmon	Soda Springs Dam
17100302	OR	S. Umpqua River	Chinook and coho salmon	n/a
17100303	OR	Umpqua River	Chinook and coho salmon	n/a
17100304	OR	Coos River	Chinook and coho salmon	n/a
17100305	OR	Coquille River	Chinook and coho salmon	n/a
17100306	OR	Sixes River	Chinook and coho salmon	n/a
17100307	OR	Upper Rogue River	Chinook and coho salmon	Lost Creek Dam
17100308	OR	Middle Rogue River	Chinook and coho salmon	n/a
17100309	CA/OR	Applegate River	Chinook and coho salmon	Applegate Dam
17100310	OR	Lower Rogue River	Chinook and coho salmon	n/a
17100311	CA/OR	Illinois River	Chinook and coho salmon	n/a
17100312	CA/OR	Chetco River	Chinook and coho salmon	n/a
18010101	CA/OR	Smith River	Chinook and coho salmon	n/a
18010206	CA/OR	Upper Klamath River	Chinook and coho salmon	Iron Gate Dam
18010207	CA	Shasta River	Chinook and coho salmon	n/a
18010208	CA	Scott River	Chinook and coho salmon	n/a
18010209	CA/OR	Lower Klamath River	Chinook and coho salmon	n/a

TABLE 1 TO PART 660, SUBPART H—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)—Continued

USGS HUC	State(s)	Hydrologic Unit Name	Salmon Species	Impassible Man–made Barrier (if present)
18010210	CA	Salmon River	Chinook and coho salmon	n/a
18010211	CA	Trinity River	Chinook and coho salmon	Lewiston Dam
18010212	CA	S.F. Trinity River	Chinook and coho salmon	n/a
18010102	CA	Mad–Redwood	Chinook and coho salmon	Robert W. Matthews Dam
18010103	CA	Upper Eel River	Chinook and coho salmon	Scott Dam
18010104	CA	Middle Fork Eel River	Chinook and coho salmon	n/a
18010105	CA	Lower Eel River	Chinook and coho salmon	n/a
18010106	CA	South Fork Eel River	Chinook and coho salmon	n/a
18010107	CA	Mattole River	Chinook and coho salmon	n/a
18010108	CA	Big – Navarro – Garcia	Chinook and coho salmon	n/a
18010109	CA	Gualala – Salmon Creek	Chinook and coho salmon	n/a
18010110	CA	Russian River	Chinook and coho salmon	Coyote Valley Dam (E. Fork Russian R.) Warm Springs Dam (Dry Cr.)
18010111	CA	Bodega Bay	Chinook and coho salmon	n/a
18060001	CA	San Lorenzo–Soquel	Coho salmon	Newell Dam (Newell Cr.)
18060006	CA	Central Coastal	Coho salmon	n/a
18050001	CA	Suisun Bay	Chinook and coho salmon	n/a
18050002	CA	San Pablo Bay	Chinook and coho salmon	San Pablo Dam (San Pablo Cr.)
18050003	CA	Coyote Creek	Chinook and coho salmon	LeRoy Anderson Dam
18050004	CA	San Francisco Bay	Chinook and coho salmon	n/a
18050005	CA	Tomales–Drakes Bay	Coho salmon	Nicasio Dam (Nicasio Cr.) Peters Dam (Lagunitas Cr.)
18050006	CA	San Francisco–Coastal South	Coho salmon	n/a
18020101	CA	Sac.–Lower Cow–Lower Clear	Chinook salmon	n/a
18020102	CA	Lower Cottonwood Creek	Chinook salmon	n/a
18020103	CA	Sacramento – Lower Thomes	Chinook salmon	n/a
18020104	CA	Sacramento – Stone Corral	Chinook salmon	n/a
18020105	CA	Lower Butte Creek	Chinook salmon	n/a
18020106	CA	Lower Feather River	Chinook salmon	n/a
18020107	CA	Lower Yuba River	Chinook salmon	n/a
18020108	CA	Lower Bear River	Chinook salmon	n/a
18020109	CA	Lower Sacramento River	Chinook salmon	n/a
18020110	CA	Lower Cache	Chinook salmon	n/a

TABLE 1 TO PART 660, SUBPART H—PACIFIC SALMON EFH IDENTIFIED BY USGS HYDROLOGIC UNIT CODE (HUC)—Continued

USGS HUC	State(s)	Hydrologic Unit Name	Salmon Species	Impassible Man–made Barrier (if present)
18020111	CA	Lower American River	Chinook salmon	Nimbus Dam
18020112	CA	Sacramento–Upper Clear	Chinook salmon	Whiskeytown Dam (Clear Cr.)
18020113	CA	Cottonwood Headwaters	Chinook salmon	n/a
18020114	CA	Upper Elder – Upper Thomas	Chinook salmon	n/a
18020118	CA	Upper Cow – Battle Creek	Chinook salmon	n/a
18020119	CA	Mill – Big Chico	Chinook salmon	n/a
18020120	CA	Upper Butte Creek	Chinook salmon	n/a
18020125	CA	Upper Yuba	Chinook salmon	n/a
18040001	CA	Mid. San Joaquin– L. Cowchilla	Chinook salmon	n/a
18040002	CA	Mid. San Joaquin– L. Merced– L. Stanislaus	Chinook salmon	La Grange Dam (Tuolumne R.)
18040003	CA	San Joaquin Delta	Chinook salmon	n/a
18040004	CA	L. Calaveras – Mormon Slough	Chinook salmon	n/a
18040005	CA	L. Consumnes– L. Mokelumne	Chinook salmon	Camanche Dam
18040010	CA	Upper Stanislaus	Chinook salmon	Goodwin Dam
18040011	CA	Upper Calveras	Chinook salmon	New Hogan Dam
18040013	CA	Upper Cosumnes	Chinook salmon	n/a

[FR Doc. E8–24515 Filed 10–14–08; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XL22

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 10, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of pollock in Statistical Area 630 of the GOA is 13,640 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2008 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 13,600 mt, and is setting aside the remaining 40 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained

from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 8, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 9, 2008.

Alan D. Risenhoover

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

[FR Doc. E8–24418 Filed 10–9–08; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 200
Wednesday, October 15, 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 93

[Docket No. FAA–2007–26470; and Notice No. 08–10]

RIN 2120–AJ29

Proposed Establishment of Special Air Traffic Rule, in the Vicinity of Luke AFB, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The FAA is correcting its proposed establishment of a Special Air Traffic Rule, in the vicinity of Luke AFB, AZ. The purpose of the NPRM was to address reported near midair collisions in the area around Luke and to help reduce the potential for midair collisions in the vicinity of Luke. In the preamble the docket number was incorrect. This document corrects the error. The old docket number FAA–2007–26470 is being changed to FAA–2008–1087.

DATES: Comments must be received on or before December 15, 2008. The original comment period was scheduled to end on November 25, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–1087 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Bring comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Or, go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, AJR–33 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783. For legal questions contact Adrianne Wojcik, Office of Chief Counsel, Regulations Division, Air Traffic & Certification of Airman Law Branch, AGC–240 Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7776.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 2008 (73 FR 55788), we published an NPRM concerning the issuance of a Special Air Traffic Rule for Luke Air Force Base in Arizona. The Docket Number assigned to the NPRM was incorrectly shown as FAA–2007–26470, which was already assigned to a different docket. Because of this error the public may have had difficulty submitting comments to the public docket. Therefore we are providing a new Docket Number, FAA–2008–1087 and extending the comment period for the NPRM.

The Correction

In the proposed rule FR Doc. E8–22568 published on September 26, 2008 (73 FR 55788), make the following correction. On page 55788, in the third column, in the document heading, correct the docket number to read ''FAA–2008–1087''.

Issued in Washington, DC, on October 8, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–24373 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0166; FRL–8727–9]

Approval and Promulgation of Implementation Plans; Alaska; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the action of the Alaska Department of Environmental Conservation (ADEC) to address the provisions of Clean Air Act section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). These provisions require each state to submit a State Implementation Plan (SIP) revision that prohibits emissions that adversely affect another state's air quality through interstate transport. EPA is proposing to approve ADEC's SIP revision because it adequately addresses the four distinct elements related to the impact of interstate transport of air pollutants for the state of Alaska. These include prohibiting emissions that contribute significantly to nonattainment of the NAAQS in another state, interfere with maintenance of the NAAQS by another state, interfere with plans in another state to prevent significant deterioration of air quality,

or interfere with efforts of another state to protect visibility.

DATES: Comments must be received on or before November 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2008–0166, by one of the following methods:

A. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. *E-mail: R10-Public_Comments@epa.gov*.

C. *Mail:* Donna Deneen, Office of Air, Waste and Toxics, AWT–107 EPA, Region 10, 1200 Sixth Ave., Suite 900, Seattle, Washington 98101.

D. *Hand Delivery or Courier:* EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Donna Deneen, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Donna Deneen at telephone number: (206) 553–6706, e-mail address: *deneen.donna@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: October 1, 2008.

Elin D. Miller,

Regional Administrator, Region 10.

[FR Doc. E8–24278 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 43

[WC Docket No. 08–190; FCC 08–203]

Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the Notice of Proposed Rulemaking (NPRM), the Federal Communications Commission (Commission) recognizes that it has continually sought to ensure that it has access to the data necessary for its public safety and broadband policymaking, and that certain infrastructure and operating data might be useful, but only if collected on an industry-wide basis from all relevant facilities-based providers of broadband and/or telecommunications. In addition, the Commission recognizes that certain service quality and customer satisfaction data might be useful, but only if collected on an industry-wide basis from all relevant facilities-based providers of broadband and/or telecommunications. The NPRM therefore seeks comment on whether and what types of such data should be collected from all relevant providers in furtherance of those goals.

DATES: Comments are due on or before November 14, 2008. Reply comments are due on or before December 15, 2008.

ADDRESSES: You may submit comments, identified by WC Docket No. 08–190, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *Mail:* Parties choosing to file by paper must file an original and four copies of each filing in WC Docket No. 07–38. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. The Commission's mail contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Wireline Competition Bureau, Industry Analysis and Technology Division, (202) 418–0940.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 08–190, adopted on September 6, 2008, and released on September 6, 2008. The complete text of this Notice of Proposed Rulemaking, and its accompanying Memorandum Opinion and Order, is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at www.fcc.gov. Alternative formats are available for persons with disabilities by contacting the Consumer and Governmental Affairs Bureau, at (202) 418–0531, TTY (202) 418–7365, or at *fcc504@fcc.gov*. The complete text of the decision may be purchased from the Commission's duplicating contractor,

Best Copying and Printing, Inc., Room CY–B402, 445 12th Street, SW., Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, TTY (202) 488–5562, or e-mail at *fcc@bcpiweb.com*.

Synopsis of Further Notice of Proposed Rulemaking

1. In the NPRM, the Commission recognizes that the collection of certain service quality, customer satisfaction, infrastructure, and operating data information might be warranted, if tailored in scope to be consistent with Commission objectives, and if obtained from the entire relevant industry of facilities-based providers of broadband and/or telecommunications. In the Memorandum Opinion and Order that accompanies the NPRM, the Commission conditionally grants in part petitions filed by certain carriers to forbear from their obligation to file the Automated Reporting Management Information System (ARMIS) Reports 43–05, 43–06, 43–07, and 43–08. See Attachment A to the NPRM for a summary of these reports.

2. As an initial matter, the Commission seeks comment on what information the Commission should collect on an industry-wide basis. In the NPRM, the Commission tentatively concludes that collection of infrastructure and operating data information would be useful to the Commission's public safety and broadband policymaking and seeks comment on the specific information that the Commission should collect. The Commission seeks comment on this tentative conclusion. The Commission further finds that this data would be useful only if they are collected from the entire relevant industry. Therefore, any such data collection would gather this information from all facilities-based providers of broadband and/or telecommunications.

3. The Commission also recognizes the possibility that service quality and customer satisfaction data contained in ARMIS Reports 43–05 and 43–06 might be useful to consumers to help them make informed choices in a competitive market, but only if available from the entire relevant industry. The Commission thus tentatively concludes that it should collect this type of information, and seeks comment on the specific information that it should collect. The Commission seeks comment on this tentative conclusion. Again, the Commission finds that these data would be useful only if they are collected from the entire relevant industry. Thus, any such data collection would gather this information from all facilities-based providers of broadband and/or telecommunications.

4. To the extent that the Commission collects any of the types of information described above, the Commission also seeks comment on the appropriate mechanism for such data collection. The Commission tentatively concludes that it should collect the infrastructure and operating data through Form 477, and seeks comment on that tentative conclusion. In addition, the Commission notes that while ARMIS information generally has been publicly available, carrier-specific Form 477 data is treated as confidential. What confidentiality protections, if any, are appropriate for the information here? To the extent that commenters support Commission collection of service quality and customer satisfaction data, the Commission also seeks comment on the appropriate mechanisms for such collections. Finally, the Commission seeks comment on possible methods for reporting information, as well as suggestions of methods to maintain and report the information, that achieve the purposes of the information collection while minimizing the burden on reporting entities, including small entities.

Ex Parte Presentations

5. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules as well.

Comment Filing Procedures

6. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Notice of Proposed Rulemaking should refer to WC Docket No. 08–190. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's rulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

7. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY–B402,

Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *FCC@BCPIWEB.COM*. The pleadings will also be available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) accessible on the Commission's Web site, *http://www.fcc.gov/cgb/ecfs*.

8. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

9. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments also must comply with section 1.49 and all other applicable sections of the Commission's rules. All parties are encouraged to utilize a table of contents, and to include the name of the filing party and the date of the filing on each page of their submission.

10. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 CFR 0.461; 5 U.S.C. 552. The Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

Initial Paperwork Reduction Act of 1995 Analysis

11. The Notice of Proposed Rulemaking seeks comment on potential 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 to comment on the potential information collection requirements contained in this document. A copy of any Paperwork Reduction Act (PRA) comments on the information collection(s) contained herein should be submitted to the Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, D.C. 20554, or via the Internet to *PRA@fcc.gov*, and to Nicholas Fraser, Office of Management and Budget (OMB), via e-mail to *Nicholas_A._Fraser@ omb.eop.gov* or via fax at 202–395–5167.

12. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

13. The Commission will also invite the general public to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will at that time publish a separate notice seeking these comments from the public. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission also seek specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Legal Basis

14. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1–5, 10, 11, 201–205, 211, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 211, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt.

Initial Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided above. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Need for, and Objectives of, the Proposed Rules

16. In the NPRM, the Commission considers whether to implement reporting requirements relating to service quality and infrastructure information. Specifically, the Commission seeks comment on whether to impose reporting requirements previously required through ARMIS Reports 43–05, 43–06, 43–07 and 43–08, or similar requirements. The Commission also seeks comment on the mechanism for collecting that information. In addition, the NPRM seeks comment on the appropriate confidentiality protections for such information. For each of these issues, the Commission also seeks comment on the burdens, including those placed on small entities, associated with possible Commission data collection and whether there are alternative rules that might lessen any burden.

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

17. 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 rules adopted herein. 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).

18. *Incumbent Local Exchange Carriers (ILECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were engaged in the provision of local exchange services. Of these 1,307 carriers, an estimated 1,019 have 1,500 or fewer employees and 288 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 the Commission's action.

19. *Competitive Local Exchange Carriers (CLECs), 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, 859 carriers reported that they were engaged in the provision of either competitive local exchange carrier or competitive access provider services. Of these 859 carriers, an estimated 741 have 1,500 or fewer employees and 118 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 44 carriers have reported that they are ''Other Local Service Providers.'' Of the 44, an estimated 43 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 the Commission's action.

20. The Commission has included small incumbent local exchange carriers (LECs) 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 LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

21. *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, 184 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 181 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

22. *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, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 853 have 1,500 or fewer employees and 28 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

23. *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, 657 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 653 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 the Commission's action.

24. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 330 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 330 companies, an estimated 309 have 1,500 or fewer employees and 21 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by the Commission's action.

25. *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 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by the Commission's action.

26. *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, 104 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 102 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the Commission's action.

27. *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, 877, and 866 numbers in use. According to the Commission's data, at the beginning of July 2006, the number of 800 numbers assigned was 7,647,941; the number of 888 numbers assigned was 5,318,667; the number of 877 numbers assigned was 4,431,162; and the number of 866 numbers assigned was 6,008,976. The Commission does 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, the

Commission estimates that there are 7,647,941 or fewer small entity 800 subscribers; 5,318,667 or fewer small entity 888 subscribers; 4,431,162 or fewer small entity 877 subscribers; and 5,318,667 or fewer small entity 866 subscribers.

Wireless Carriers and Service Providers

28. Below, for those services subject to auctions, the Commission notes 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.

29. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Because there is not, as yet, much if any data to establish small business size standards for the different categories of wireless firms that fall under this broad, new census category, the Commission will use data gathered under superseded census categories to estimate the relevant size standards. Prior to 2007, the SBA had developed a small business size standard for wireless firms within the now-superseded census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, the Commission will estimate small business prevalence using the prior categories and associated data. For the first category of Paging, data for 2002 show that there were 807 firms 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. For the second category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms 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, using the prior categories and the available data, the Commission estimates that the majority of wireless firms can be considered small. According to Commission data, 432 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. The Commission has estimated that 221 of these are small, under the SBA small business size standard. Thus, under this category and size standard, about half of firms can be considered small.

30. *Common Carrier Paging.* The SBA has developed a small business size standard for the superseded category of ''Paging,'' under which a business is small if it has 1,500 or fewer employees. According to Commission data, 365 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 360 have 1,500 or fewer employees, and 5 have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by the Commission's action. In addition, in the Paging *Third Report and Order*, the Commission 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.

31. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, held in April 1997, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

32. *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 the superseded census category of ''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, 432 carriers reported that they were engaged in the provision of wireless telephony. The Commission has estimated that 221 of these are small under the SBA small business size standard.

33. *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.

34. *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 actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. 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.

35. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

36. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that 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. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

37. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities.

38. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* the Commission adopted 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'' as 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. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

39. *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.

40. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission 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 the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

41. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of the Commission's evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

42. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission noted, however, that the common carrier microwave fixed licensee category includes some large entities.

43. *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. The Commission is 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.

44. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the Commission's action.

45. *Wireless Cable Systems.* Wireless cable systems use 2 GHz band frequencies of the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and the Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services. The Commission estimates that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As described below, the SBA small business size standard for the broad census category of Cable and Other Program Distribution, which consists of such entities generating $13.5 million or less in annual receipts, appears applicable to MDS, ITFS and LMDS. Although this census category has been superseded by the new census category of Cable and Other Subscription Programming, the Commission uses the size standards under the superseded census category because no standards have been established for the new category. Other standards also apply, as described.

46. The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and

wireless cable operators that did not receive their licenses as a result of the MDS auction fall under the SBA small business size standard for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, the Commission estimates that there are approximately 850 small entity MDS (or BRS) providers, as defined by the SBA and the Commission's auction rules.

47. Educational institutions are included in this analysis as small entities; however, the Commission has not created a specific small business size standard for ITFS (now EBS). The Commission estimates that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of the licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small entities.

48. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that has annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, the Commission believes that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

49. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities, holds interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

50. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is the Commission's understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

51. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

Satellite Service Providers

52. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data, however, are from the (last) economic census of 2002, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.''

53. 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, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by the Commission's action.

54. 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, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by the Commission's action.

Cable and OVS Operators

55. In 2007, the SBA recognized new census categories for small cable entities. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially-affected small business entities. In addition to the estimates provided above, the Commission considers certain additional entities that may be affected by the data collection from broadband service providers. Because section 706 requires us to monitor the deployment

of broadband regardless of technology or transmission media employed, the Commission anticipates that some broadband service providers will not provide telephone service. Accordingly, the Commission describes below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

56. *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.

57. *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.

58. *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. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore the Commission is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

59. *Open Video Services.* Open Video Service (OVS) systems provide subscription services. As noted above, the SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 45 OVS operators to serve 75 areas, and some of these are currently providing service. Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 44 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

Electric Power Generation, Transmission and Distribution

60. *Electric Power Generation, Transmission and Distribution.* The Census Bureau defines this category as follows: ''This industry group comprises establishments primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.'' The SBA has developed a small business size standard for firms in this category: ''A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' According to Census Bureau data for 2002, there were 1,644 firms in this category that operated for the entire year. Census data do not track electric output and the Commission has not determined how many of these firms fit the SBA size standard for small, with no more than 4 million megawatt hours of electric output. Consequently, the Commission estimates that 1,644 or fewer firms may be considered small under the SBA small business size standard.

Internet Service Providers, Web Portals and Other Information Services

61. In 2007, the SBA recognized two new small business, economic census categories. They are (1) Internet Publishing and Broadcasting and Web Search Portals, and (2) All Other Information Services. However, there is no census data yet in existence that may be used to calculate the number of small entities that fit these definitions. Therefore, the Commission will use prior definitions of these types of entities in order to estimate numbers of potentially affected small business entities.

62. *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 an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

63. *Web Search Portals.* The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The

Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' 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 2002, there were 342 firms in this category that operated for the entire year. Of these, 303 had annual receipts of under $5 million, and an additional 15 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

64. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $23 million or less in average annual receipts. According to Census Bureau data for 2002, there were 6,877 firms in this category that operated for the entire year. Of these, 6,418 had annual receipts of under $10 million, and an additional 251 firms had receipts of between $10 million and $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

65. *All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' The Commission's action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7 million or less in average annual receipts. According to Census Bureau data for 2002, there were 155 firms in this category that operated for the entire year. Of these, 138 had annual receipts of under $5 million, and an additional four firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

66. *Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non-Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this census category; that size standard is 500 or fewer employees. According to Census Bureau data for 2002, there were 1,362 firms in this category that operated for the entire year. Of these, 1,351 had employment of 499 or fewer employees, and six firms had employment of between 500 and 999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by the Commission's action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

67. In the NPRM, the Commission considers whether to implement certain reporting requirements relating to service quality and infrastructure information. Specifically, the Commission seeks comment on whether to impose certain reporting requirements previously required through ARMIS Reports 43–05, 43–06, 43–07 and 43–08, or similar requirements. In addition, the NPRM seeks comment on the appropriate confidentiality protections for such information. The Commission also seeks comment on the mechanism for collecting that information.

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

68. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

69. As noted above, the NPRM seeks comment on possible methods for reporting the proposed information collections, as well as suggestions of methods to maintain and report the information that achieve the purposes of the NPRM while minimizing the burden on reporting entities, including small entities. This information will assist the Commission in determining whether these various proposed information collections would impose a significant economic impact on small entities. Based on these questions, the Commission anticipates that the record will be developed concerning alternative ways in which the Commission could lessen the burden on small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

70. None.

Ordering Clauses

71. Accordingly, *it is ordered* that, pursuant to sections 1–5, 10, 11, 201–205, 211, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151–155, 160, 161, 201–205, 211, 215, 218–220, 251–271, 303(r), 332, 403, 502, and 503, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, this Memorandum Opinion and Order and Notice of Proposed Rulemaking *is adopted.*

72. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

73. *It is further ordered*, pursuant to sections 1.103(a) and 1.427(b) of the Commission's rules, 47 CFR 1.103(a), 1.427(b), that comments are due on or before November 14, 2008 and reply comments are due on or before December 15, 2008.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–24476 Filed 10–14–08; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2008–0088; MO 9921050083–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Least Chub (*Iotichthys phlegethontis*) as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the least chub (*Iotichthys phlegethontis*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing of the least chub may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species, and we will issue a 12-month finding to determine if the petitioned action is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data regarding this species. We will make a determination on critical habitat for this species if, and when, we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before December 15, 2008.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2008–0088; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information at *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119; telephone 801–975–3330, extension 126. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the least chub. We are seeking information regarding the species' historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If we determine that listing the least chub is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to areas within the geographical range currently occupied by the least chub, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act (16 U.S.C. 1531 *et seq.*).

Please note that submissions merely stating support or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1533(b)(3)(B)).

You may submit your information concerning this 90-day finding by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we may not consider comments that we do not receive by the date specified in the **DATES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and materials we receive, as well as supporting documentation we used in preparing this 90-day finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Endangered Species Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition and supporting information otherwise available in our files at the time of the petition review. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information as defined in the Code of Federal Regulations (CFR) regarding a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that the petition presented substantial information, we are required to promptly commence a review of the status of the species.

We received a petition from the Center for Biological Diversity, Confederated Tribes of the Goshute Reservation, Great Basin Chapter of Trout Unlimited, and Utah Chapter of the Sierra Club, dated June 19, 2007, requesting that we list the least chub (*Iotichthys phlegethontis*) as threatened or endangered under the Act. Additionally, the petition requested that critical habitat be designated concurrent with listing. The petition clearly identified itself as a petition and included the identification information, as required in 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter dated July 13, 2007. In that letter we advised the petitioners that we could not address their petition at that time because existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded that emergency listing of the least chub was not warranted.

In making this finding, we relied on information provided by the petitioners that we determined to be reliable after reviewing sources referenced in the petition and available in our files. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold.

Previous Federal Actions

In 1972, and again in 1989, the least chub was recognized as a threatened species by the Endangered Species Committee of the American Fisheries Society (Miller 1972, p. 250; Williams *et al.* 1989, pp. 2, 5). In 1980, the Service reviewed the species' status and determined that there was insufficient data to warrant its listing as an endangered or threatened species. On December 30, 1982, the Service classified the least chub as a Category 2 Candidate Species (47 FR 58454). In 1989, we again conducted a status review, and we reclassified least chub as a Category 1 Candidate Species (54 FR 554). On September 29, 1995, the Service published a proposed rule to list the least chub as endangered with critical habitat (60 FR 50518). A listing moratorium, imposed by Congress in 1995, suspended all listing activities and further action on the proposal was postponed.

During the moratorium, the Service, Utah Department of Natural Resources (UDNR), Bureau of Land Management (BLM), Bureau of Reclamation (BOR), Utah Reclamation and Mitigation Conservation Commission (URMCC), Confederated Tribes of the Goshute Reservation, and Central Utah Water Conservancy District developed a Least Chub Conservation Agreement and Strategy (LCCAS), and formed the Least Chub Conservation Team (Perkins *et al.* 1998). The LCCAS was revised in 2005 (Bailey *et al.* 2005). The goal of the agreement is to ensure the species' long-term survival within its historic range and assist in the development of rangewide conservation efforts. The objectives of the agreement are to eliminate or significantly reduce threats to the least chub and its habitat, to the greatest extent possible, and to ensure the continued existence of the species by restoring and maintaining a minimum number of least chub populations throughout its historic range. The Least Chub Conservation Team implements the LCCAS, and monitors populations, threats, and habitat conditions.

As a result of conservation actions and commitments made by signatories to the 1998 LCCAS (Perkins *et al.* 1998, p. 10), measures to protect the least chub were being addressed and implemented. Consequently, the Service withdrew the listing proposal on July 29, 1999 (64 FR 41061).

Species Information

The least chub (*Iotichthys phlegethontis*) is a monotypic cyprinid (member of the minnow family) that is typically less than 6.5 centimeters (2.6 inches) long. The species has broad tolerances to habitat conditions that have allowed it to persist in the fluctuating environments of the springs and marshes of Utah's West Desert (Lamarra 1981, p. 1). Least chub are intermittent spawners, releasing a few eggs at a time over an extended period from February to September (Crawford 1979, p. 74). They are opportunistic feeders and use available food items, including algae, diatomaceous material, midges, copepods, and ostracods (Sigler and Sigler 1987, p. 182; Hickman 1989, p. 8), depending on seasons and habitats (Crist and Holden 1980, p. 808; Lamarra 1981, p. 5).

The species is endemic to the Bonneville Basin of Utah where it was once widely distributed throughout a variety of habitats, including rivers, streams, springs, ponds, marshes, and swamps (Sigler and Miller 1963, p. 91). Over the past 15,000 years, least chub have persisted in relic wetland pockets left by Bonneville and Provo Lakes, which have been receding since the Pleistocene period. A decline in the abundance of least chub was first noted in the 1940s and 1950s (Osmundson 1985, p. 1).

Currently, six known, wild, extant populations of least chub remain. Three are in Snake Valley in Utah's West Desert, and include the Leland Harris Spring complex, Gandy Salt Marsh, and Bishop Spring:

(1) Leland Harris—R.R. Miller collected the first least chub from the Leland Harris Spring complex in 1970 (Sigler and Sigler 1987, p. 182). The site is north of the Juab/Millard County line and is primarily on BLM land, but portions are privately owned. The site consists of 12 springheads that feed a playa wetland. The habitat fluctuates in size seasonally. Least chub is the dominant fish species; they are abundant and the population appears to be stable (Hines *et al.* 2008, p. 42). The site has been monitored annually by the Utah Division of Wildlife Resources (UDWR) since 1993 (Hines *et al.* 2008, p. 43). Miller Spring is part of the Leland Harris Spring complex, but outflows of the two sites are not always connected.

(2) Gandy Salt Marsh—C.L. Hubbs collected least chub at this site in 1942 (Sigler and Miller 1963, p. 82). Gandy Salt Marsh is south of the Millard/Juab County line and is managed by BLM. It consists of 52 small springheads that drain into a large playa wetland. Least chub numbers fluctuate at this site, but they are persistent and nonnative species are not present (Hines *et al.* 2008, p. 40).

(3) Bishop Springs (Twin Springs)—This spring complex is the largest occupied least chub site in Snake Valley. The marsh has four large springs containing least chub, including Foote Reservoir, Central Spring, and two sites at Twin Springs. These flow into marshlands, seeps, and braided channels. The least chub population has remained stable; however, nonnatives are present and include common carp (*Cyprinus carpio*), bull frogs (*Rana catesbeiana*), and a small number of bass (*Micropterus* sp.) (Hines *et al.* 2008, p. 37).

The remaining three wild populations are located along the Wasatch Front and include Mills Valley and Clear Lake in the Sevier River drainage and Mona Springs in the Utah Lake drainage:

(4) Mills Valley—The Mills Valley population was discovered in 1996 by UDWR biologists. The site is in the Sevier River drainage in Mills Valley, southeast Juab County. It consists of a wetland with many springheads throughout the complex. Most of Mills Valley is privately owned, but a portion is on the UDWR Mills Meadows Wildlife Management Area (WMA). Nonnatives at this site include fathead minnows (*Pimephales promelas*),

sunfish (*Lepomis* sp.), and common carp (*Cyprinus carpio*). Surveys from 1999 to 2006 indicate a stable least chub population; however, fathead minnow numbers during this period have doubled (Hines *et al.* 2008, p. 44).

(5) Clear Lake—In 2003, UDWR biologists found least chub at the Clear Lake Waterfowl Management Area. This reserve consists of a shallow reservoir and diked ponds. It is managed by UDWR to provide waterfowl habitat and is located on the southern edge of the Bonneville Basin in Millard County. Nonnatives captured at Clear Lake include rainbow trout (*Oncorhynchus mykiss*) and common carp. Population estimates are difficult to determine at the Clear Lake site; however, since the discovery of this population, successful recruitment has been documented (Hines *et al.* 2008, p. 45).

(6) Mona Springs—The Mona Springs population was discovered in 1995 by biologists from UDWR. The UDWR and BOR acquired 41.5 hectares (ha) (102.6 acres (ac)) on the Mona Springs complex (URMCC 2008). Least chub at this site may be extirpated as a result of mosquitofish (*Gambusia affinis*) infestation (Hines *et al.* 2008, p. 34).

Portions of wild least chub populations have been introduced into captive or natural refuge environments by UDWR, including five genetic refuge and translocation sites:

(1) Lucin Pond—Lucin Pond was built to provide cooling water for locomotive steam engines for the transcontinental railroad. The water is collected from springs in the Pilot Mountains and delivered by an antiquated aqueduct a distance of approximately 8 kilometers (km) (5 miles (mi)). Forty-two least chub were transplanted to Lucin Pond in 1989 by UDWR biologists; however the origin of these fish was not documented. Genetic analysis indicates the fish originated from both the Gandy Salt Marsh and Leland Harris populations in Snake Valley (Mock and Miller 2005, p. 276). Mosquitofish are abundant in the pond.

(2) Antelope Island—Garden Creek is a 0.04–ha (0.1–ac) pond that was dredged by the Utah Department of Parks and Recreation (UDPR), and is fed by a perennial stream. In 2004, 947 least chub were introduced to the pond. This site is considered a genetic refuge for the Mona Springs population. Reproduction and recruitment are occurring, and this transplant area appears to be a success (Hines *et al.* 2008, p. 46).

(3) Atherly Reservoir—Atherly Reservoir is a waterfowl management area located in Rush Valley in Tooele County, and operated by UDWR. Approximately 13,000 least chub from the Mills Valley population were introduced in 2006. Common carp are present at the site. The status of the population will be determined after monitoring is conducted (Hines *et al.* 2008, p. 50).

(4) Fish Springs National Wildlife Refuge—Attempts in 1995 and 1996 to introduce least chub into spring heads on the refuge were unsuccessful due to the reinvasion of mosquitofish. In 2007, least chub were introduced into Ibis and Pintail Ponds, two units on the Refuge that had been drained and allowed to stay dry over the winter. Mosquitofish are present, but the sites are large, the habitat is diverse and expansive, and the ponds can be drained periodically (Hines *et al.* 2008, p. 50).

(5) Red Knolls Pond—This site is located in west Box Elder County. Nonnative eradication has been conducted, and the pond is fenced to exclude livestock. In 2005, 250 least chub from Bishop Springs were introduced. Successful recruitment was observed in 2006 (Hines *et al.* 2008, p. 50).

Least chub are being held and produced at the Wahweap State Fish Hatchery in Big Water, Utah, and the Fisheries Experiment Station in Logan, Utah. Fish from these stations are used for transplants to reintroduction sites.

Threats Analysis

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

In making this 90-day finding, we evaluated whether information regarding the least chub, as presented in the petition and other information available in our files at the time of petition review, is substantial, thereby indicating that listing the least chub as threatened or endangered may be warranted. Our evaluation is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The petitioners state that threats to the species' habitat include: (1) Livestock grazing; (2) mining, including peat mining and oil and gas leasing and exploration; (3) urban development; and (4) water withdrawal and diversion.

Livestock Grazing

The petitioners state that nearly 100 percent of the wild, extant least chub sites have been impacted by livestock in the last 10 years, and that direct and indirect impacts from livestock grazing to least chub, and aquatic habits in general, is well documented in the literature (Schultz and Leininger 1990, pp. 297–299; Fleischner 1994, pp. 635–636).

The petitioners report that livestock grazing impacts at the Mills Valley population site are the most serious in existing wild chub habitat. Ungulate damage occurs at other least chub sites, including Mona Springs, Leland Harris, and Twin Springs south of the Bishop Springs site, and Central Spring and Foote Reservoir at the Bishop Springs site. They state that most least chub habitats are not protected from grazing.

The petitioners provide general information regarding livestock damage to least chub habitats, but do not present specific information that livestock damage has resulted in least chub population declines or loss of habitat. The LCCAS has identified livestock grazing as a potential threat to least chub habitats; the Least Chub Conservation Team monitors grazing conditions at least chub population sites, and implements protective measures as necessary. At the Mona Springs site, an electric fence has been installed around the spring and riparian area to exclude cattle. Fencing has also been installed at Gandy Salt Marsh, Leland Harris, and Miller Spring to exclude cattle from spring head areas. A rotational grazing plan was implemented on 75 ha (188 ac) of the Leland Harris site to improve habitat conditions (Hines *et al.* 2008, p. 8).

On the basis of our evaluation of the information presented in the petition, we determined that the petition does not present substantial information indicating that listing the least chub may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to livestock grazing. The Least Chub Conservation Team implements monitoring and mitigation measures through the LCCAS to reduce the threat

of livestock grazing to known populations of least chub.

Mining, Oil and Gas Leasing and Exploration

The petitioners state that mining can negatively impact least chub populations by polluting streams or reducing stream flows. The petition documents illegal peat mining in Mills Valley on private property in the late 1990s. Mills Valley contains one of the larger least chub populations. Although the illegal activities have ceased, permits have now been issued that could allow future peat mining. The petitioners acknowledge that peat mining has not yet occurred, and they reference an evaluation indicating that peat mining in Mills Valley might not be profitable.

The petitioners accurately report that oil and gas leasing and exploration is ongoing in areas occupied by least chub. They state that oil and gas exploration or development can result in impacts to springs, marshes, and riparian and other associated vegetation. Water used for these operations can impact habitats by polluting streams or reducing stream flows.

The petition documents that, in 2006, BLM leased multiple parcels north and west of Miller Spring and in parts of the Leland Harris population site. Most of the Gandy Salt Marsh area and portions of Mills Valley also have been leased. Applications for permits to drill at these sites have not yet been pursued. The petitioners document that BLM has attached directional drilling stipulations to the Gandy Salt Marsh leases with the intent to minimize impacts to occupied least chub habitats.

Seismic lines have been tested to determine locations of oil and gas deposits in the Mills Valley area. Although lease holders have committed to avoiding spring and marsh habitats within seismic routes, the petitioners believe that impacts will occur from seismic exploration. The petitioners state that vehicles, including drilling rigs and recording trucks, will crush vegetation and compact soils. Routes used for seismic exploration will likely become established roads. Surface activities may impact water quality. Drilling activities have the potential to release drilling fluids into the aquifer or fracture underground geologic features that are associated with spring discharge.

We are aware of past illegal peat mining activities in Mills Valley. We reviewed the potential for lawful peat mining to occur in the future. As the petitioners cite, UDNR contracted an analysis of the quality of the peat in 2003. The report revealed that the peat is of inferior quality and would not be financially profitable to harvest. Therefore, given our current understanding of peat quality in the area, we believe the threat from large-scale peat mining is minimal.

Oil and gas leasing and exploration have the potential to impact least chub habitats. The petition provides general information regarding the extent of oil and gas leasing and potential development in least chub habitats. However, it does not present specific information that this development has resulted in losses, or threatens to result in losses, of least chub habitat. The petition correctly identifies conservation measures that BLM has attached to leases in occupied least chub habitats.

Much of the information in the petition concerning oil and gas leasing and exploration identifies potential rather than actual impacts. On the basis of our evaluation of the information presented in the petition, we determined that it does not present substantial information to indicate that listing the least chub may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to mining or oil and gas leasing or exploration.

Urban and Suburban Development

The petitioners indicate that urban and suburban development affect least chub habitats with numerous, diverse, direct and indirect impacts, including but not limited to: (1) Encroachment that changes the hydrology, sediment regimes, and pollution input; (2) human occupation near streams and springs that increases the potential for introduction of nonnative plants and animals; and (3) alterations of stream banks, floodplains, and wetland habitats by increased diversions of surface flows and connected groundwater.

The petitioners state that throughout the Utah Lake hydrological subunit, residential development and agricultural and municipal water development projects have impacted least chub by converting habitats into residential areas and altering natural flows. They indicate that the Mona Springs habitat is experiencing rapid growth and that a development is expanding to within 2 km (1.25 mi) of the least chub site.

We acknowledge that development has impacted the Wasatch Front least chub populations. The least chub was originally reported to be common throughout the Bonneville Basin in a variety of habitat types (Sigler and Miller 1963, p. 82). Innumerable springs, streams, and wetlands along the Wasatch Front have been impacted or eliminated as a result of development.

However, within the currently occupied range of the least chub, no wild populations are known to be at risk from urban development. UDWR owns the majority of suitable habitat of populations near the Wasatch Front, including the Mona Springs and Clear Lake sites, and a portion of Mills Valley. In addition, Mills Valley is largely a peat wetland with low development potential. On the basis of our evaluation of the information presented in the petition, we determined that it does not present substantial information to indicate that listing the least chub may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to urban or suburban development.

Water Withdrawal and Diversion

The petitioners consider the most significant threat to Snake Valley least chub populations to be proposed groundwater withdrawals from the Snake Valley aquifer. They indicate that the agency charged with supplying water to Las Vegas, the Southern Nevada Water Authority (SNWA), has proposed drilling nine groundwater pumping stations just inside Nevada on the Utah/Nevada border in Snake Valley, and withdrawing up to 3,048 to 3,658 hectare-meters (ha-m) (25,000 to 30,000 ac-ft) a year of groundwater (Schaeffer and Harrill 1995, p. 11). The petitioners believe the wells will likely be drilled at locations where water from creeks coming off the Snake Range becomes subterranean and enters Utah's portion of Snake Valley. If all permits are granted, SNWA intends to start pumping in 2015. The petitioners state that although SNWA's formal proposal calls for pumping about 3,048 ha-m (25,000 ac-ft) of water per year from Snake Valley, SNWA has applications on file with the Nevada State Engineer for pumping roughly double that amount—up to 6,177 ha-m (50,665 ac-ft) per year. In their Clark, Lincoln, and White Pine Counties Groundwater Development (GWD) Project Final Scoping Package for an Environmental Impact Statement, SNWA identified 9 points of diversion in Snake Valley and estimates of 15 to 25 groundwater production wells (BLM 2006, pp. 1, 2, 17, 18).

The petitioners reference several studies predicting impacts to the dynamics and overall budget of the Snake Valley groundwater system (Schaeffer and Harrill 1995, pp. 19–27; Kirby and Hurlow 2005, pp. 21–26, 30–

34). They state that once groundwater pumping at the base of the Snake Range begins, spring discharge throughout Snake Valley will decrease by an unpredictable amount and rate.

The petitioners present their concerns relative to characterization of the aquifer and conclude that groundwater pumping in Spring Valley, Nevada, will affect Utah resources. Reductions in the water table of the Spring Valley aquifer could decrease the current flow of an estimated 488 to 610 ha-m (4,000 to 5,000 ac-ft) per year through the alluvial aquifer that delivers groundwater to Snake Valley. The petitioners question whether the water in this aquifer is a renewable resource. They believe that geologic changes may have occurred since the aquifers filled, resulting in partitioning of the aquifers and alteration of flows within the system.

To evaluate the reliability of the petitioners' statements concerning water withdrawals, we reviewed the information available to us in our files. Aspects of the GWD project have changed since the petitioners' description, and will likely continue to change as the project progresses. An overview of the GWD project indicates that the SNWA has applied to the BLM for issuance of rights-of-way to construct and operate a system of regional water supply and conveyance facilities. The project would include conveyance of up to 24,384 ha-m (200,000 ac-ft) of groundwater—20,360 ha-m (167,000 ac-ft) by SNWA and the remaining capacity provided for Lincoln County Water District from six hydrographic basins (SNWA 2007, p. 1–1). The groundwater that SNWA intends to convey would be from both existing and future permitted water rights in hydrographic basins of the Great Salt Lake Desert Regional Flow System (Nevada and Utah) and White River Flow System (Nevada).

The GWD project includes construction and operation of groundwater production wells, water conveyance facilities, and power facilities. The proposed production wells and facilities would be located on public lands managed by BLM in Nevada. No facilities are planned in Utah. Two portions of the GWD project, the Spring Valley Basin and the Snake Valley Basin, may affect Utah resources (SNWA 2007, p. 1–1).

The Nevada State Engineer issued a ruling on April 16, 2007, approving a major portion of the SNWA groundwater rights applications for the Spring Valley Hydrographic Basin. SNWA can pump 4,877 ha-m (40,000 ac-ft) annually from the Basin, with the potential for an additional 2,438 ha-m (20,000 ac-ft) per year based on results of 10 years of monitoring (State of Nevada 2007, p. 56). The Service and other Department of the Interior (DOI) agencies (BLM, National Park Service, and Bureau of Indian Affairs) protested SNWA's Spring Valley water rights applications when they were filed in 1989, based in part on potential impacts to water-dependent resources.

The DOI agencies reached a stipulated agreement with SNWA for the Spring Valley withdrawal, and withdrew their protests before the Nevada State Engineer held a hearing. The Stipulated Agreement, signed in September 2006, established a process for developing and implementing hydrologic and biologic monitoring, management, and mitigation (State of Nevada 2007, p. 56). Representatives from the Service and UDWR are participating on the Biological Work Group formed under the Spring Valley Stipulation Agreement. This group is designing and implementing a monitoring, management, and mitigation plan to avoid unreasonable adverse effects to water-dependent ecosystems and to maintain or enhance baseline biologic integrity and ecological health (SNWA 2006, Exhibit 2). In accordance with the Nevada State Engineer's ruling, 5 years of baseline data must be collected and analyzed prior to initiation of any groundwater pumping.

The Nevada State Engineer hearings on SNWA water rights applications in Snake Valley have not yet been scheduled. According to the Lincoln County Recreation and Development Act (LCCRDA) of 2004, before any trans-basin diversion from groundwater basins located within Nevada and Utah, the States must reach an agreement on the division of water resources and groundwater flow systems. Negotiations are occurring, but Nevada and Utah have not reached agreement. The timeframe for an interstate water withdrawal agreement for Snake Valley is uncertain.

The petitioners reference predictions of impacts to the Snake Valley aquifer from groundwater pumping (Kirby and Hurlow 2005, p. 33). We concur that some or all of these impacts may occur. However, a lack of information on the extent of aquifers, their hydraulic properties, and the distribution of water levels in the aquifers makes it difficult to develop a reliable prediction of the amount or location of draw-down, or the rate of change in natural discharge, caused by pumping (Prudic 2006, p. 3). A hydrologic groundwater flow model specific to the six basins being analyzed in the current Environmental Impact Statement (EIS), and outlined in the GWD project, is being developed.

The LCCRDA of 2004 directed a study of groundwater quantity, quality, and flow characteristics in the carbonate and alluvial aquifers of White Pine County, Nevada; groundwater basins located in White Pine or Lincoln Counties, Nevada; and adjacent areas in Utah. This Basin and Range Carbonate Aquifer System (BARCAS) study was conducted by U.S. Geological Survey (USGS), the Desert Research Institute, and the State of Utah. USGS released a final report of the BARCAS study on February 22, 2008 (USGS 2008).

The BARCAS study included a water-resources assessment of the geologic framework and hydrologic processes influencing the quantity and quality of groundwater resources. USGS determined that groundwater systems underlying many of the valleys in eastern Nevada and western Utah are not isolated, but rather contribute to or receive flow from adjoining basins. They also determined that some large-volume springs cannot be supported entirely by the local recharge from the adjacent mountains; these springs depend on water from potentially hundreds of miles away (USGS 2008, pp. 2–8).

The BARCAS study is used to guide designation of basin and regional groundwater ''budgets'' for 13 hydrographic areas and the entire study area in White Pine County, Nevada. The study included assessment of the hydrogeology, recharge and discharge, and groundwater flow and geochemistry of the aquifer system. One result from the BARCAS study was documentation that the study-wide average annual groundwater recharge exceeded annual discharge by about 10,973 ha-m (90,000 ac-ft); most of this groundwater surplus exits the study area through Snake Valley to the northeast or White River Valley to the south (USGS 2008, p. 3).

In 2007, the Utah State Legislature charged the Utah Geological Survey with establishing a groundwater monitoring network in Utah's West Desert in response to the proposed groundwater pumping project. The objectives of the monitoring network are to define background water level and geochemical conditions prior to SNWA pumping, and to quantify any changes in these conditions after pumping begins.

On the basis of our evaluation of the information presented in the petition and in our files, we determined that the petition presents substantial information to indicate that listing least chub as a threatened or endangered species may be warranted due to water

withdrawal and diversion. However, a great deal of uncertainty exists regarding the long-term effects of the groundwater pumping proposal for aquifers and surface waters in Utah's West Desert. Numerous models and studies are underway that should provide additional information that would enable us to evaluate effects.

The GWD project is anticipated to be completed in January 2014 (SNWA 2007, pp. 4–11). Prior to its completion, baseline data collection and research on biologic and hydrologic impacts will continue. Despite lack of specific data at this time, the level of concern regarding negative impacts to spring discharge rates, and ultimately least chub habitats, from groundwater pumping is high.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition states the overutilization for commercial, recreational, scientific or educational purposes does not currently pose a threat to least chub.

C. Disease or Predation

The petitioners document that where nonnative fishes have been introduced, least chub are unlikely to persist (Osmundson 1985, p. 2; Hickman 1989, pp. 2–3, 9). Introduced game fishes, including largemouth bass (*Micropterus salmoides*), rainbow trout (*Oncorhynchus mykiss*), common carp (*Cyprinus carpio*), and brook trout (*Salvelinus fontinalis*), are predators on least chub, and these species have been stocked into least chub habitats (Workman *et al.* 1979, pp. 1–2, 136; Sigler and Sigler 1987, p. 183; Osmundson 1985, p. 2; Crist 1990, p. 5).

The petitioners note that mosquitofish (*Gambusia affinis*), in particular, are a direct threat because of aggressive predation on least chub eggs and young (Sigler and Sigler 1987, p. 183; Sigler and Miller 1963, p. 92). They indicate that population declines at Mona Springs (Hines *et al.* 2008, p. 34) and Lucin Pond (Thompson 2005, p. 4) have been directly attributed to the presence of mosquitofish.

The petitioners note that disease and incidence of parasitism are not major factors affecting least chub. The parasite blackspot (*Neascus cuticola*) is known to be present in the Leland Harris population. Infested least chub examined to date have appeared to be robust and in good condition (Bailey *et al.* 2005, p. 21).

We find that the petition presents substantial information indicating that nonnative species, particularly mosquitofish, are a predation threat to least chub in wild and translocated populations. Wasatch Front populations are currently impacted the most by nonnative species. The Mona Springs population is near extirpation (Hines *et al.* 2008, p. 34) due to the invasion of mosquitofish. The nonnative fathead minnow (*Pimephales promelas*) is prominent at the Mills Valley site, and sunfish (*Lepomis* sp.) and common carp also are present; however, no effects have been observed to the least chub population (Hines *et al.* 2008, p. 43). Rainbow trout and common carp have been captured at Clear Lake, and other nonnative species may be present; these species do not appear to be affecting the least chub population.

Two efforts to translocate least chub to Fish Springs National Wildlife Refuge failed as a result of predation (and competition) by mosquitofish. A similar translocation on Antelope Island also failed as a result of predation by mosquitofish.

The Least Chub Conservation Team implements ongoing efforts to prevent the introduction of nonnative species into least chub habitats. The Policy for Fish Stocking and Transfer Procedures includes protocols for the introduction of nonnative species, including game, and is adhered to by UDWR. All stocking actions must be consistent with ongoing recovery and conservation actions for Utah Sensitive Species (UDWR 1997, p. 19).

In addition, the Least Chub Conservation Team (LCCT) has attempted mechanical removal of mosquitofish from occupied least chub habitats, most intensively at the Mona Springs complex. The least chub population at Mona Springs has been steadily declining since 1999. UDWR made extensive efforts to mechanically remove mosquitofish at this site for 3 consecutive years, but even after 95 percent removal, the population recovered within a year (Hines *et al.* 2008, p. 32). Least chub at this location are now near extirpation (Hines *et al.* 2008, p. 31). A treatment for mosquitofish at Water and Deadman Springs on the Fish Springs National Wildlife Refuge was conducted in 1995 and 1996 through a combination of Rotenone application and draining the ponds. Least chub were then transplanted into the ponds, but re-invasion by mosquitofish resulted in transplant failure (Wilson and Whiting 2002, p. 4; Wilson and Mills 2004, pp. 4–5).

In 2002, a Memorandum of Understanding (MOU) between UDWR and Mosquito Abatement Districts was finalized in order to reduce the spread of mosquitofish in Utah. The Mosquito Abatement Districts are now restricted to stocking in ornamental ponds. In 2008, UDWR and the Mosquito Abatement Districts of Salt Lake and Davis Counties will conduct pilot studies to determine the effectiveness of replacing mosquitofish with least chub for mosquito control purposes; however, this has not yet been completed.

Despite efforts to monitor and remove mosquitofish, this nonnative species continues to be a predation threat (as well as a competitor; see Factor E) to the least chub. At some sites, such as Mona Springs, the threat is large enough that extirpation of least chub populations is possible. On the basis of our evaluation of the information presented in the petition, we find that the petition presents substantial information indicating that listing the least chub as a threatened or endangered species may be warranted due to the presence and potential spread of nonnative predatory species in least chub habitats.

D. Inadequacy of Existing Regulatory Mechanisms

The petition reviews the legal authorities of each Federal agency relative to providing protection for the least chub, including the Service, BLM, and U.S. Army Corps of Engineers (Corps). The petitioners indicate that State, Tribal, and local programs are inadequate substitutes for Federal protection under the Act (*Center for Biological Diversity* v. *Gale Norton*, CV 01–409 TUC DCB, Jan. 13, 2003; Doremus and Page 2001, p. 1266). They acknowledge other agencies that contribute to the LCCAS, but have no regulatory authority, including BOR, URMCC, and the Central Utah Water Conservancy District.

The petition indicates that the Service has no specific authority to take actions for recovery of least chub. Consideration or implementation of Service recommendations is discretionary. The petition states that management of least chub habitat on BLM lands is likely inadequate to prevent further decline of the species in Snake Valley because, regardless of the Federal Land Policy and Management Act (43 U.S.C. 1701 *et seq.*) and the National Environmental Policy Act (42 U.S.C. 4231 *et seq.*), impacts continue to occur to least chub sites. The Corps administers issuance of dredge and fill permits under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*). These permits regulate a wide variety of activities in streams and wetlands in both the historic and extant range of least chub. Under the regulations and policies governing implementation of this program, there is substantial latitude for allowing destruction and degradation of stream

habitats, including those that could potentially support least chub.

The least chub is currently classified in the State of Utah as a Tier 1 Sensitive Species, a status that includes federally listed species and species for which a Conservation Agreement has been completed and implemented (UDWR 2005, pp. 5–3).

The petitioners review the extensive efforts of UDWR, as a result of the LCCAS, to implement conservation measures for the least chub. They compare proposed measures in the LCCAS to completed conservation measures of habitat enhancement and protection, restoration of hydrologic conditions, nonnative control, range expansion, monitoring, mitigation, regulation, and information and education programs. The petitioners acknowledge progress made in all categories, but conclude that it is not adequate; despite the extensive efforts and new information on the species, the status of the least chub has not substantially improved since it was determined warranted for listing in 1995.

Although the least chub does not have protection under the Act, conservation provisions have been accomplished. The Service is represented on the LCCAS Technical Team, and we evaluate the progress of actions to protect the species. BLM also participates on the LCCAS Technical Team and assists in on-the-ground projects, such as fencing and habitat restoration, and has attached conservation measures to leases in areas of occupied least chub habitats.

UDWR, through coordinated efforts by the Least Chub Conservation Team, has implemented site-specific habitat enhancement and restoration projects that include land acquisition, conservation easements, landowner agreements, bank stabilization, nonnative vegetation removal, fencing to exclude livestock, dredging, and water line repairs (Hines *et al.* 2008, pp. 22–24). Hydrologic conditions of extant least chub population habitats in Snake Valley have been protected by the UDWR. For example, in 2007, UDWR purchased water rights in Foote Reservoir to maintain water levels at Bishop and Twin Springs (Hines *et al.* 2008, p. 23).

Efforts also have been made to protect and increase the long-term viability of least chub populations. Portions of five of the six wild least chub populations (Bishop Springs, Mills Valley, Mona Springs, Clear Lake, and Leland Harris) have been relocated to new sites to provide genetic refuge (Hines *et al.* 2008, p. 20). In addition, two fish hatcheries harbor brood stock for use in ongoing relocation efforts and four display/educational populations exist.

To date, BLM has demonstrated support for least chub conservation by requiring lease stipulations that avoid drilling in least chub habitats. UDWR has completed conservation measures within existing regulatory frameworks, such as acquiring water rights, purchasing land, and implementing habitat restoration. Mosquito Abatement Districts are now incorporating least chub conservation needs into mosquito control programs by removing mosquitofish as the primary control mechanism and cooperating in research efforts.

Despite extensive efforts, regulatory mechanisms have not been able to ameliorate the threat from nonnative species, and State water regulations are not specific enough to ensure long-term viability of the least chub. We conclude that the petition presents substantial information to indicate that listing least chub as a threatened or endangered species may be warranted due to inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The petitioners state that other natural and manmade threats to the species include: (1) Competition from nonnative species; (2) hybridization; (3) mosquito abatement programs; (4) stochastic disturbance and population isolation; (5) drought and climate change; and (6) cumulative effects.

Competition from Nonnative Species

The petitioners indicate that nonnative fishes, including mosquitofish, rainwater killifish (*Lucania parva*), and plains killifish (*Fundulus zebrinis*), have been released into least chub habitats. These species have similar diets to the least chub and are considered competitors.

Nonnative fishes exist in least chub habitats. Mosquitofish, in addition to being a predator on least chub eggs and young, are a significant competitor to adult least chub for food sources. Population declines at Mona Springs and Lucin Pond have been directly attributed to the presence of mosquitofish (Hines *et al.* 2008, p. 34; Thompson 2005, p. 4). See Factor C (predation) for a discussion of the efforts, mostly unsuccessful, to remove and prevent reinvasion of nonnative fish in least chub habitats. We find that the petition presents substantial information to indicate that listing least chub as a threatened or endangered species may be warranted due to competition from nonnative fish.

Hybridization

The petition notes that hybridization may occur in compromised habitats. Hybrid introgression of least chub with Utah chub (*Gila atraria*), and with speckled dace (*Rhinichthys osculus*), has been reported (Miller and Behnke 1985, pp. 509–515). In complex habitats, reproductive isolating mechanisms can be eliminated as a result of habitat alteration and degradation; overlaps of reproductive niches and breakdowns of behavior due to overcrowding then occur (Crawford 1979, p. 74; Lamarra 1981, p. 7). Least chub hybrids have been reported from springs near Callao, Utah, where least chub once existed (Miller and Behnke 1985, p. 510).

Recent molecular diversity studies on existing least chub populations indicate that currently no evidence of hybridization between least chub and Utah chub exists, and suggest that previous hybridization reports may have been due to a misidentification of specimens (Mock and Miller 2003, p. 10). The information provided by the petitioners does not present substantial information to indicate that listing the least chub may be warranted due to hybridization.

Mosquito Abatement Programs

The petition indicates that, although BLM has rejected Juab County's request for implementing a mosquito control spraying program on BLM administered lands, the spraying may still occur on private lands. The least chub may be affected because mosquito larvae are a major food item in the least chub diet.

Least chub have been shown to be opportunistic feeders and use available food items, including algae, diatomaceous material, midges, copepods, and ostracods (Sigler and Sigler 1987, p. 92; Hickman 1989, p. 8) depending on seasons and habitats (Crist and Holden 1980, p. 808; Lamarra 1981, p. 5). As previously stated, an MOU between UDWR and Mosquito Abatement Districts was finalized in order to reduce the spread of mosquitofish in Utah. In 2008, UDWR and the Mosquito Abatement Districts of Salt Lake and Davis Counties will conduct studies to determine the effectiveness of replacing mosquitofish with least chub for mosquito control purposes; however, studies have not been completed. The petitioners conclude that effects of a mosquito control program on least chub are unknown. The petitioners do not present substantial information to indicate that listing the least chub may

be warranted due to effects from mosquito abatement programs.

Stochastic Disturbance and Population Isolation

The petition presents information relative to the limited distribution and isolation of remaining least chub populations. The petitioners cite literature on the risks to small, isolated populations, including environmental and demographic stochasticity (Lande 1993, pp. 911–917).

Least chub populations are isolated, both naturally and as the result of human impacts. Habitat connectivity is absent among the three Wasatch Front populations as a result of past urban development. West Desert populations are similarly disconnected except in years of exceptionally high water. However, the LCCT team has been successful in protecting the remaining occupied sites. Translocation efforts have established five new sites in natural habitats (Hines *et al.* 2008, p. 20). In addition, results of genetic studies indicate that ongoing translocation efforts have been successful in maintaining genetic diversity (Mock and Miller 2005, pp. 273–277). Therefore, although small, isolated populations will remain a conservation challenge, we find that the petitioners have not presented substantial information to indicate that listing the least chub may be warranted due to effects from stochastic disturbance and population isolation.

Drought and Climate Change

The petition indicates that a prolonged drought has occurred in Utah and some least chub habitats, particularly the Gandy Salt Marsh complex, may have been compromised. The petition cites the effects of climate change on biodiversity (IPCC 2001, pp. 5, 16; Davenport *et al.* 1998, pp. 229–238), and the combined effects of drought to least chub populations and habitats in Utah. The petitioners state that climate change, specifically increased global temperatures, may be a more serious long-term threat to least chub than drought. They indicate that the effects of increased global temperatures include decreased duration and depth of winter snowfall (IPCC 2001, pp. 6, 9); earlier spring runoff and decreased water availability; decreased productivity and cover of herbaceous vegetation, resulting in increased soil erosion; and unprecedented rates of vegetation shifts due to die off, especially along boundaries of semi-arid ecosystems (Davenport *et al.* 1998, p. 231). These changes may pose threats to native aquatic species as the quality and quantity of aquatic, riparian, and mesic upland ecosystems decline with decreased water availability.

The petitioners present no direct link between climate change and the least chub, and we have no information in our files to substantiate their claims. Therefore, we find that the petitioners have not presented substantial information to indicate that listing the least chub may be warranted due to effects from climate change.

Drought has been documented periodically within the range of the least chub, and is likely currently affecting the species. However, the species has continued to exist despite periods of natural drought, and on its own, this is not considered a significant threat to the species. During periods of drought, farmers and ranchers rely more heavily on water sources for irrigation purposes, and this factor combined with drought has likely led to the loss of several springs in the Snake Valley. However, it is currently not possible to separate drought from water withdrawals in order to analyze it as a threat to the least chub. Therefore, we find that the petitioners have not presented substantial information to indicate that listing the least chub may be warranted due to effects from drought.

Cumulative Effects

The petitioners indicate that many possible combinations of effects could cumulatively impact least chub populations. They discuss possible combined effects of climate change, drought, and aquifer depletions on the least chub and its habitats.

We cannot predict the cumulative effects of climate change and drought on least chub at this time. In addition, because the effects of proposed groundwater withdrawals have not been determined, it is difficult to predict how the combination of those effects with potential climate change and drought would affect the least chub. Effects will be determined to some extent possibly by modeling efforts, and by the results of implementation and monitoring of future groundwater withdrawals. While potential combinations of negative impacts are a concern for the least chub, we find that the petitioners have not presented substantial information to indicate that listing the least chub may be warranted due to the cumulative effects of climate change, drought, and aquifer depletions.

Finding

We reviewed the petition, supporting information provided by the petitioners, and information in our files and evaluated that information to determine whether the sources cited support the claims made in the petition. We find the petitioners presented substantial information under Factor A (Present or threatened destruction, modification, or curtailment of habitat or range) indicating that listing the least chub as threatened or endangered under the Act may be warranted due to water withdrawals and diversions. While uncertainty exists on the magnitude of effects to the least chub from proposed groundwater pumping, concern regarding the six extant, wild populations is sufficient to warrant further analysis.

We find that the petitioners presented substantial information under Factors C (Disease or Predation) and E (Other Natural or Manmade Factors Affecting the Species' Continued Existence) indicating that listing the least chub as threatened or endangered under the Act may be warranted due to the continuing threat of nonnative species, particularly mosquitofish, for which there is no known means of control. Several significant efforts have been made to remove mosquitofish from least chub habitats, without success. The wild least chub population at Mona Springs may be extirpated due to mosquitofish. Of the six natural populations, five have nonnative species present and of five refuge sites, two currently have mosquitofish present.

We find that the petitioners presented substantial information under Factor D (Inadequacy of Existing Regulatory Mechanisms) indicating that listing the least chub as threatened or endangered under the Act may be warranted due to inadequacy of existing regulations. Regulatory mechanisms may not be adequate to ameliorate the threat from nonnative species, and State water regulations are not specific enough to ensure long-term viability of the least chub.

Based on our consideration of the information provided in the petition, and in accordance with recent applicable court decisions pertaining to 90-day findings, we find that the petition presents substantial scientific information indicating that listing the least chub may be warranted. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)).

Therefore, we are initiating a status review to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the least chub.

It is important to note that the ''substantial information'' standard for a 90-day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

We encourage interested parties to continue gathering data that will assist with the conservation and monitoring of the least chub. The petitioners requested that critical habitat be designated for this species. If we determine in our 12-month finding that listing the least chub is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

References Cited

A complete list of all references cited in this document is available upon request from the Utah Ecological Services Field Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary authors of this document are staff of the Utah Ecological Services Field Office (see the **FOR FURTHER INFORMATION CONTACT** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 7, 2008.

Paul R. Schmidt,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–24467 Filed 10–14–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

RIN 0648–AV61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster (*Panulirus argus*) Resources of the Caribbean, Gulf of Mexico, and South Atlantic; Minimum Conservation Standards for Imported Spiny Lobster

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

ACTION: Announcement of availability of fishery management plan amendments; request for comments.

SUMMARY: NMFS announces the availability of Amendment 4 to the Spiny Lobster Fishery Management Plan (FMP) of Puerto Rico and the U.S. Virgin Islands and Amendment 8 to the Joint Spiny Lobster FMP of the Gulf of Mexico and South Atlantic prepared by the Caribbean, South Atlantic, and Gulf of Mexico Fishery Management Councils (Councils). Amendments 4 and 8 would establish minimum conservation standards for imported spiny lobster. The intended effect of Amendments 4 and 8 is to eliminate the primary market for lobster that do not meet the minimum size limit or mean size at sexual maturity, which is expected to result in a reduction in the foreign harvest of these undersized animals and increase the spawning stock biomass and long-term potential yield within the pan-Caribbean spiny lobster fishery.

DATES: Written comments must be received no later than 5 p.m., eastern time, on December 15, 2008.

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

- E-mail: *0648–AV61.NOA@noaa.gov*. Include in the subject line the following document identifier: 0648–AV61–NOA.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.
- Fax: 727–824–5308, Attention: Jason Rueter.

Copies of Amendments 4 and 8, which include an Environmental Impact Statement, a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis are available from NMFS Southeast Regional Office, 263 13th Avenue South, St Petersburg, FL 33701; e-mail: *jason.rueter@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, 727–824–5305; fax 727–824–5308; e-mail: *jason.rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The United States is a major importer of spiny lobster, importing over 88,000 tons (over 194 million lbs) over the past 10 years, worth an estimated $2.27 billion dollars. The United States imports over 90 percent of the spiny lobster harvested in South and Central America and the Caribbean countries. Some of the exporting countries have minimum size limits, but other countries do not. As a result, some of the imported product is legally harvested, but the majority of the undersized product is illegally harvested in the exporting countries. The major exporters to the United States are the Bahamas, Brazil, Honduras, and Nicaragua. All of these exporting countries have some form of minimum size requirement, but the requirements are variable and enforcement is severely lacking. Therefore, NOAA Fisheries Service in coordination with the Caribbean, South Atlantic, and Gulf of Mexico Fishery Management Councils is considering minimum conservation standards on imports to curtail the flow of imported undersized lobster harvested in foreign countries. The pan-Caribbean spiny lobster stock is considered to be fully exploited or over-exploited in much of its range. Therefore, additional restrictions on the harvest of animals below the mean size at sexual maturity (i.e., undersized animals) would greatly benefit the stock. Eliminating the primary market for undersized lobster is expected to result in a reduction in the foreign harvest of undersized animals and increase the spawning stock biomass and long-term potential yield within the pan-Caribbean spiny lobster fishery.

A proposed rule that would implement the measures outlined in Amendments 4 and 8 has been received from the Councils. In accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS is evaluating the proposed rule to determine whether it is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by December 15, 2008 whether specifically directed to the Amendments 4 and 8 or the

proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendments. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendments or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: October 9, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–24484 Filed 10–14–08; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 73, No. 200

Wednesday, October 15, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

McKelvie Geographic Area Rangeland Allotment Management Plans on National Forest System Lands on the Samuel R. McKelvie National Forest, Bessey Ranger District in Nebraska

AGENCY: Forest Service, USDA.

ACTION: Second revised notice of intent to prepare an environmental impact statement.

SUMMARY: This project would revise Rangeland Allotment Management Plans (RAMP) for all allotments within the McKelvie Geographic Area on the McKelvie National Forest and analyze continuation of grazing within the constraints of the Revised Nebraska Land and Resource Management Plan (NLRMP). A Notice of Intent (NOI) for this project was published May 15, 2006 (71 No. 93 FR 27986). More than six months have elapsed since the projected draft environmental impact statement (DEIS) date in that original NOI. This revised NOI is being issued to update the project schedule.

DATES: Comments will be accepted concerning the scope of the analysis and must be received within 30 days after publication of this NOI in the **Federal Register**. The Notice of Availability of the DEIS is expected to be published in the **Federal Register** approximately March 2009.

ADDRESSES: Send written comments to: Michael E. Croxen, Interdisciplinary Team Leader, USDA Forest Service, P.O. Box 39, Halsey, Nebraska 69142.

FOR FURTHER INFORMATION CONTACT: Michael E. Croxen, Interdisciplinary Team Leader, USDA Forest Service, P.O. Box 39, Halsey, Nebraska 69142. Phone (308) 533–2257.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The purpose of the environmental impact statement is to determine current conditions, analyze environmental consequences of actions to those conditions, and assist the decision maker in selecting management/monitoring strategies consistent with meeting desired conditions in the NLRMP. The need for the action is to ensure that authorized uses and associated management activities move towards or maintaining desired NLRMP conditions.

Proposed Action: The Bessey Ranger District proposes to implement best management practices and activities with adaptive management and monitoring strategies to ensure compliance between current conditions and NLRMP desired conditions on the McKelvie Geographic Area.

Other Possible Alternatives: Other possible alternatives that would be considered for analysis include a No-Action Alternative (to not change current permitted uses) and a No-Grazing Alternative (to eliminate any grazing on the project area).

Issues: What grazing strategies will maintain or move desired conditions toward NLRMP goals and objectives, and how will these grazing strategies impact permitted livestock grazers (permittees)?

Responsible Official: Patricia D. Barney, District Ranger, Bessey Ranger District, P.O. Box 39, Halsey, Nebraska 69142.

Nature of Decision To Be Made: The decision to be made is whether or not to continue permitted uses within the McKelvie Geographic Area. If uses are permitted, then adaptive management strategies and monitoring will be identified to ensure compliance with desired NLRMP conditions.

Public Scoping Process: Comments and input regarding this proposal were requested from the public, other groups and agencies via direct mailing on May 19, 2006. Additional comments were solicited during a public open house June 6, 2006 held in Valentine, Nebraska. With this revised NOI, comments will be accepted again 30 days from the publication date of this notice in the **Federal Register**.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and the EPA will publish a notice of availability for the DEIS in the **Federal Register**. The DEIS is scheduled to be available for public review and comment by approximately March 2009. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, the reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 regarding the specificity of comments.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: September 30, 2008.

Patti Barney,

District Ranger, Bessey Ranger District, Nebraska National Forest.

[FR Doc. E8–24408 Filed 10–14–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 3 of the 2008 Panel

AGENCY: U.S. Census Bureau.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before December 15, 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(s) and instructions should be directed to Patrick J. Benton, Census Bureau, Room HQ–6H045, Washington, DC 20233–8400, (301) 763–4618.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP, which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or ''waves'' over the life of the panel. The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members' participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as ''topical modules.''

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided this data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2008 panel is currently scheduled for 4 years and will include 13 waves of interviewing beginning September 2008. Approximately 65,300 households were selected for the 2008 panel, of which, 45,000 households are expected to be interviewed. We estimate that each household contains 2.1 people, yielding 94,500 person-level interviews in Wave 1 and subsequent waves. The interviews take 30 minutes on average. Three waves will occur in the 2008 SIPP Panel during FY 2009. The total annual burden for 2008 Panel SIPP interviews would be 141,750 hours in FY 2009.

The topical modules for the 2008 Panel Wave 3 collect information about:

- Welfare Reform
- Retirement and Pension Plan Coverage

Wave 3 interviews will be conducted from May 2009 through August 2009.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. The reinterviews would require an additional 1,553 burden hours in FY 2009.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2008 panel, respondents are interviewed a total of 13 times (13 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Control Number: 0607–0944.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 94,500 people per wave.

Estimated Time Per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 143,303.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

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: October 8, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–24351 Filed 10–14–08; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 28–2007, Docket 29–2007, Docket 30–2007

Foreign–Trade Zone 158 - Vicksburg/Jackson, MS, Requests for Manufacturing Authority, Comment Period on New EvidenceLane Furniture Industries, Inc.; H.M. Richards, Inc.; Bauhaus USA, Inc. (Upholstered Furniture)

On October 8, 2008, the applicant in the above–referenced proceedings made a submission to the Foreign–Trade Zones Board containing new factual evidence on which there has not been an opportunity for public comment. Public comments limited to the evidence in the October 8, 2008, submission may be submitted until November 14, 2008. Rebuttal comments may be submitted during the subsequent 15-day period, until December 1, 2008. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at: Foreign–Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave., NW, Washington, DC 20230. For further information, contact Pierre Duy, examiner, at: (202) 482–1378 or pierre__duy@ita.doc.gov.

Dated: October 9, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–24479 Filed 10–14–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–502)

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 7, 2008, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. The review was requested by Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, petitioners), and covers one producer of the subject merchandise, Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai). The period of review (POR) is March 1, 2006 through February 28, 2007. Based on our analysis of the comments received, we have made changes to the preliminary results, which are discussed in the ''Changes Since the Preliminary Results'' section below. For the final dumping margins, see the ''Final Results of Review'' section below.

EFFECTIVE DATE: October 15, 2008.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo or Jacqueline Arrowsmith, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–2371 or (202) 482–5255, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2008, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on circular welded pipes and tubes from Thailand. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 18749 (April 7, 2008) (*Preliminary Results*).

In the *Preliminary Results*, the Department stated its intention to request additional information from Saha Thai on certain issues for which the record of this administrative review was not completely clear. On April 11, 2008, we issued a supplemental questionnaire to Saha Thai and its affiliated resellers. Saha Thai submitted its response on May 5, 2008.

We invited parties to comment on the *Preliminary Results*. On April 23, 2008, we revised the due dates for comments and informed parties of the same. On May 21 and May 28, 2008, we received timely case briefs and rebuttal briefs, respectively, from both petitioners and respondent.

On July 22, 2008, the Department extended the final results from August 5, 2008 to October 6, 2008. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 73 FR 42548 (July 22, 2008).

Period of Review

The period of review (POR) is March 1, 2006 through February 28, 2007.

Scope of the Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipes and tubes.'' The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the scope of the order is dispositive.

Analysis of Comments Received

The issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration to David M. Spooner, Assistant Secretary for Import Administration: *Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Circular Welded Pipes and Tubes from Thailand* (*Decision Memorandum*), dated concurrently with this notice and which is hereby adopted by this notice. A list of the issues addressed in the *Decision Memorandum* is appended to this notice. The *Decision Memorandum* is on file in the Central Records Unit, room 1117 of the main Department of Commerce building (CRU), and can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received and our consideration of information submitted by Saha Thai on May 5, 2008 in its supplemental questionnaire response, received subsequent to the issuance of the preliminary results, we have made adjustments to our margin calculations. We have granted Saha Thai a duty drawback adjustment under section 772(c)(1)(B) the Tariff Act of 1930, as amended (the Act), based on the exemption of import duties on raw materials used in the exported pipes and tube. However, we have adjusted the calculation of the yield factor used in calculating this duty drawback adjustment. We also added the value of these exempted import duties to the cost of manufacture. For these final results, we decided to use the U.S. customs duty as reported by Saha Thai. In addition,

we made certain modifications to the program to ensure proper product comparisons. These adjustments are discussed in detail in the *Decision Memorandum*.

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period of March 1, 2006 through February 28, 2007:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Saha Thai Steel Pipe (Public) Company, Ltd.	4.26

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1) of the Department's regulations, the Department calculates an assessment rate for each importer of the subject merchandise. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the period of review produced by the company included in these final results of review for which the reviewed company did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate from the investigation if there is no rate for the intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) for the company covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company–specific rate published in the most recent final results in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the most recent final results in which that producer participated; and, (4) if neither the exporter nor the producer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 15.67 percent, the all–others rate established in the less than fair value investigation. *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Determination of Sales at Less Than Fair Value*, 51 FR 3384 (January 27, 1986).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I – Issues in Decision Memorandum

Comment 1: Whether Saha Thai Has Met Both Prongs of the Department's Duty Drawback Test
Comment 2: Whether Saha Thai Should Receive an Upward Adjustment for Duty Drawback/Exemption
Comment 3: Whether the Department Should Add a ''Third'' Prong to Its Eligibility Test
Comment 4: Whether the Department Should Use Saha Thai's Actual Yield Factors in Evaluating the Duty Exemption
Comment 5: Whether to Include Exempted and Unpaid Duties on Imported Raw Materials in Saha Thai's Reported Cost of Manufacture (COM)
Comment 6: Whether the Department Needs to Make Corresponding Adjustments to the G&A and Interest Ratio Calculations if Unpaid Import Duties Are Included in Saha Thai's COM
Comment 7: Whether to Deduct Ocean Freight from C&F Value to Calculate U.S. Duty
Comment 8: Level of Trade Adjustment
Comment 9: Whether Zeroing Is In Accordance with the Antidumping Statute or the International Obligations of the United States
Comment 10: Whether the Department Should Correct Alleged Errors in the Preliminary G&A and Financial Expense Ratio Calculations
Comment 11: Alleged Programming Errors

[FR Doc. E8–24481 Filed 10–14–08; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL06

Fisheries in the Western Pacific; Marine Conservation Plan for Pacific Insular Areas; Northern Mariana Islands

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces the approval of a three-year marine conservation plan (MCP) for the Northern Mariana Islands.

DATES: This agency decision is effective October 6, 2008.

ADDRESSES: Copies of the MCP are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS Pacific Islands Regional Office, at (808)944–2207.

SUPPLEMENTARY INFORMATION: Under Section 204(e)(1)(A)of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, may negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA) to allow foreign fishing within waters of the U.S. Exclusive Economic Zone (EEZ) adjacent to American Samoa, Guam, or the Northern Mariana Islands, and at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which the PIAFA applies. Section 204(e)(4) of the Magnuson-Stevens Act requires that prior to entering into a PIAFA, the appropriate Governor and the Western Pacific Fishery Management Council (Council) shall develop a three-year MCP containing detailing the uses for funds to be collected by the Secretary under the PIAFA. Any payments received under a PIAFA shall be deposited into the United States Treasury and then covered over to the Treasury of the Pacific Insular Area for which funds were collected. In the case of violations by foreign fishing vessels occurring within the EEZ off any Pacific Insular Area, any amount received by the Secretary which is attributable to fines and penalties imposed under the Magnuson-Stevens Act, including such sums collected from the forfeiture and disposition or sale of property seized subject to its authority, after payment of direct costs of the enforcement action to all entities involved in such action, shall be deposited into the Treasury of the Pacific Insular Area adjacent to the EEZ in which the violation occurred, to be used for fisheries enforcement and for implementation of a MCP.

The MCP to be approved by the Secretary must be consistent with the Council's fishery management plans, identify conservation and management objectives (including criteria for determining when such objectives have been met), and prioritize planned marine conservation projects.

At its 138th meeting held in June 2007, the Council approved the MCP for the Northern Mariana Islands and recommended its submission to the Secretary for approval. NMFS, designee of the Secretary, received the MCP on March 10, 2008. Following a review of the MCP, NMFS informed the Council and Government of the Commonwealth of the Mariana Islands (CNMI) that the MCP was incomplete. On September 23, 2008, the Department of Lands and Natural Resources, CNMI, submitted an amended MCP to NMFS.

The MCP contains 12 objectives, listed below, which are consistent with the Council's five existing fishery management plans:

1. Data collection and reporting;
2. Resource assessment and monitoring;
3. Incidental catch, bycatch, and protected species interaction;
4. Habitat assessment and monitoring;
5. Management procedures;
6. Surveillance and enforcement;
7. Domestic fisheries development;
8. Marine conservation education;
9. Public participation;
10. Regional cooperation;
11. Performance evaluation; and
12. Western Pacific demonstration projects.

The MCP identifies 19 programs or projects associated with the MCP objectives for potential funding under a PIAFA. The top ten projects in order of priority are:

1. EEZ enforcement program;
2. Subsistence and recreational harvest monitoring system;
3. Commercial harvest monitoring system;
4. Charter fishing economic impact study;
5. Analysis of data on pelagic fishery resources;
6. CNMI commercial fisheries baseline assessment;
7. Regional fisheries meeting and conferences funding assistance;
8. Recreational and subsistence fishing economic impact and use study;
9. Fisheries technology program; and
10. Local auction marketplace feasibility study.

This notice announces that NMFS has determined that the MCP for the Northern Mariana Islands satisfies the requirements of the Magnuson-Stevens Act and has approved the MCP for a three-year period: October 6, 2008, through October 6, 2011.

Dated: October 9, 2008.

Alan D. Risenhoover,

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

[FR Doc. E8–24485 Filed 10–14–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XK55

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice that Vendor Will Provide Year 2009 Cage Tags

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

ACTION: Notice of vendor to provide year 2009 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog allocation owners that they will be required to purchase their year 2009 cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

ADDRESSES: Written inquiries may be sent to Edward Stern, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Edward Stern, Fishery Management Specialist, (978) 281–9177; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.75(b) authorize the Regional Administrator of the Northeast Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the year 2009 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to allocation owners in these fisheries from NMFS within the next several weeks.

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

October 7, 2008.

Emily H. Menashes,

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

[FR Doc. E8–24509 Filed 10–14–08; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the AmeriCorps Member Application Form. Applicants will respond to the questions included in this ICR in order to apply to serve as AmeriCorps members.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 15, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by e-mail at *aborgstrom@cns.gov*.

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

This Member Application Form will be used by applicants who are interested in serving as AmeriCorps members. The information requested in the application form makes it possible for programs to select members to serve. Programs also use this form as an example that they customize to develop their own recruitment materials.

Current Action: The Corporation seeks to renew the current AmeriCorps Member Application Form. The form is identical to the current form and will be used in the same manner. The Corporation also seeks to continue using the current form until the revised form is approved by OMB. The current form is due to expire on January 31, 2009.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Member Application Form.

OMB Number: 3045–0054.

Agency Number: None.

Affected Public: Applicants to serve in AmeriCorps.

Total Respondents: 225,000.

Frequency: Ongoing.

Average Time Per Response: Averages 1.25 hour.

Estimated Total Burden Hours: 281,250 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 8, 2008.

Kim Mansaray,

Chief of Staff for Kristin McSwain, Director, AmeriCorps State and National.

[FR Doc. E8–24539 Filed 10–14–08; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning AmeriCorps Application Instructions: State Competitive, State Education Award Program, National Direct, National Direct Education Award Program, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning,. Applicants will respond to the questions included in this ICR in order to apply for funding through these grant competitions.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 15, 2008.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930, or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

These application instructions will be used by applicants for funding through AmeriCorps State and National grant competitions.

Current Action: The Corporation seeks to renew and revise the current AmeriCorps State and National Application Instructions. The Application Instructions are being revised for increased clarity. The Application Instructions will be used in the same manner as the existing Application Instructions. The Corporation also seeks to continue using the current Application Instructions until the revised Application Instructions are approved by OMB. The current form is due to expire on April 30, 2009.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions: State Competitive, State Education Award Program, National Direct, National Direct Education Award Program, National Professional Corps, Indian Tribes, States and Territories without Commissions, and National Planning.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations, State, Local and Tribal.

Total Respondents: 600.

Frequency: Annually.

Average Time per Response: 24 hours.

Estimated Total Burden Hours: 14,400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 8, 2008.

Kim Mansaray,

Chief of Staff for Kristin McSwain, Director, AmeriCorps State and National.

[FR Doc. E8–24540 Filed 10–14–08; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–66]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–66 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 25, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 0 8 2008

In reply refer to:
USP006276-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-66, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $774 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-66

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** United Arab Emirates

(ii) **Total Estimated Value:**

Major Defense Equipment*	$653 million
Other	$121 million
TOTAL	$774 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 14 UH-60M BLACK HAWK helicopters with engines; 6 T700-GE-701D spare engines; 14 each AN/ALQ-144A(V)3 Infrared (IR) Countermeasure Sets, AN/APR-39A(V)4 Radar Signal Detecting Sets, AAR-57(V)3 Common Missile Warning Systems, and AN/AVR-2B Laser Warning Sets; Weaponization of 23 UH-60M BLACK HAWK helicopters; 390 AGM-114N HELLFIRE missiles; 8 HELLFIRE training missiles; 30 M299 HELLFIRE launchers; 23,916 MK-66 Mod 4 2.75" Rocket Systems in the following configuration: 1,000 M229 High Explosive Point Detonate, 540 M255A1 Flechette, 1,152 M264 RP Smoke, 528 M274 Smoke Signature, 495 M278 Flare, 720 M274 Infrared Flare, 20,016 HA23 Practice; 22 GAU-19 Gatling Gun Systems; and 93 M-134 Mini-Gun. Also included: spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, ground support, communications equipment, U.S. Government and contractor technical and logistics personnel services, aircraft survivability equipment, tools and test equipment, and other related elements of logistics support.

(iv) **Military Department:** Army (ZUE, Amendment #1)

(v) **Prior Related Cases, if any:** FMS Case ZUE - $808M - 20 Aug 07

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** SEP 0 8 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates - UH-60M BLACK HAWK Helicopters

The Government of United Arab Emirates (UAE) has requested a possible sale of 14 UH-60M BLACK HAWK helicopters with engines; 6 T700-GE-701D spare engines; 14 each AN/ALQ-144A(V)3 Infrared (IR) Countermeasure Sets, AN/APR-39A(V)4 Radar Signal Detecting Sets, AAR-57(V)3 Common Missile Warning Systems, and AN/AVR-2B Laser Warning Sets; Weaponization of 23 UH-60M BLACK HAWK helicopters; 390 AGM-114N HELLFIRE missiles; 8 HELLFIRE training missiles; 30 M299 HELLFIRE launchers; 23,916 MK-66 Mod 4 2.75" Rocket Systems in the following configuration: 1,000 M229 High Explosive Point Detonate, 540 M255A1 Flechette, 1,152 M264 RP Smoke, 528 M274 Smoke Signature, 495 M278 Flare, 720 M274 Infrared Flare, 20,016 HA23 Practice; 22 GAU-19 Gatling Gun Systems; and 93 M-134 Mini-Gun. Also included: spare and repair parts, publications and technical data, support equipment, personnel training and training equipment, ground support, communications equipment, U.S. Government and contractor technical and logistics personnel services, aircraft survivability equipment, tools and test equipment, and other related elements of logistics support. The estimated cost is $774 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The United Arab Emirates (UAE) plans to increase its air mobility capability and existing helicopter fleet. The UH-60M BLACK HAWK helicopters will be used for various military operations to include the protection of sovereign borders as well as the protection and defense of U.S. and coalition strategic facilities. The proposed purchase of UH-60M BLACK HAWK helicopters will greatly enhance the UAE's military functionality by increasing deterrence capabilities. The UAE will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Sikorsky Aircraft Corporation of Stratford, Connecticut, and General Electric of Lynn, Massachusetts. The purchaser has requested offsets; however, at this time, agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

Implementation of this proposed sale will require the assignment of 6-8 Contractor Field Service representatives to the United Arab Emirates for approximately two years after initial fielding to assist in the delivery and deployment of the helicopters.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-66

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UH-60M BLACK HAWK helicopters contain communications and identification equipment, navigation equipment, aircraft survivability equipment, displays and sensors. The airframe itself does not contain sensitive technology. The highest level of classified information to be released for training, operation and maintenance of the BLACK HAWK helicopters is Unclassified. The highest level that could be revealed through reverse engineering or testing of the end item is Secret.

2. The UH-60M BLACK HAWK helicopters will include the following pertinent equipment listed below, either installed on the aircraft or included in the proposed sale:

a. The AN/APR-39A(V)4 Radar Signal Detecting Set is a system which provides warning of a radar directed air defense threat to allow appropriate countermeasures. Hardware is classified Confidential when programmed with United States threat data; releasable technical manuals for operation and maintenance are classified Confidential; releasable technical data (technical performance) is classified Secret. The system can be programmed with threat data provided by the purchasing country.

b. The AN/AVR-2B Laser Warning Set is a passive laser warning system that receives, processes and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The hardware is classified Confidential; releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering is not a major concern.

c. The AN/ALQ-144A(V)3 Infrared (IR) Countermeasure Set is an active, continuous operating, omni-directional, electrically fired IR jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential and releasable technical manuals for operation and maintenance are classified Secret. Reverse engineering and development of countermeasures are concerns if the hardware and releasable technical data are compromised to a competent adversary.

d. The AAR-57 Common Missile Warning System is a passive laser warning system that receives, processes, and displays threat information resulting from aircraft illumination by lasers on the multi-functional display. The Dispenser components and Payload Module components dispense expendables/decoys to enhance aircraft survivability. The system is designed to employ countermeasures according to a program developed and implemented by the aircrew. Radar cross-section and frequency coverage are sensitive elements. The hardware is Unclassified. Releasable technical publications for operation and maintenance are classified Secret. Aircraft optimization is the critical element; reverse engineering is not a major concern. Additional components are the Control Panel and the Electronics Module that have been integrated in the Weapons Management and Control software.

e. AGM-114K3 and AGM-114N3 HELLFIRE missiles are designed to penetrate and destroy targets located in populated areas with a precision guidance system and specially designed warhead to minimize other damage. Vulnerability data, countermeasures, vulnerability/susceptibility analyses, and threat definitions are classified Secret or Confidential. Reverse engineering could reveal Confidential information. Susceptibility of HELLFIRE missile to diversion or exploitation is considered low risk. Components of the system are also considered highly resistant to reverse engineering. Performance and system specifications are classified Secret. The hardware and its components are Unclassified.

f. The Bright Star II Electro-Optical System is a long-range, multi-sensor targeting and target designation system. It is considered non-standard equipment for the UH-60 BLACKHAWK helicopter. It is used to designate and target opposing forces for employment of the HELLFIRE weapon system, and 2.75" rockets. The hardware is Unclassified. Rangefinder performance and signal transfer function for the Infrared Imager are considered Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

[FR Doc. E8–23350 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–46]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–46 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

OCT 0 3 2008
In reply refer to:
USP003050-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-46, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House
Committee on Foreign Affairs
Committee on Armed Services
Committee on Appropriations

Senate
Committee on Foreign Relations
Committee on Armed Services
Committee on Appropriations

Transmittal No. 08-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) **Total Estimated Value:**

Major Defense Equipment*	$116 million
Other	$ 84 million
TOTAL	$200 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 32 UGM-84L Sub-Launched HARPOON Block II missiles, 2 UTM-84L HARPOON Block II Exercise missiles, 2 Advanced HARPOON Weapons Control System (Version 2), 36 HARPOON containers, 2 UTM-84XD Encapsulated HARPOON Certification and Training Vehicles, test equipment and services, spares and repair parts for support equipment, training and training equipment, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support.

(iv) **Military Department:** Navy (LGP)

(v) **Prior Related Cases, if any:**
FMS case LEZ - $66 million - 02 Sep 93
FMS case LFV - $84 million - 18 Jun 97
FMS case LGB - $86 million - 30 Sep 98
FMS case LGI - $110 million - 13 Sep 01
FMS case LGN - $37 million - 30 May 03
FMS case LGV - $120 million – 15 Nov 07

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:**

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - UGM-84L HARPOON Block II Missiles

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 32 UGM-84L Sub-Launched HARPOON Block II missiles, 2 UTM-84L HARPOON Block II Exercise missiles, 2 Advanced HARPOON Weapons Control System (Version 2), 36 HARPOON containers, 2 UTM-84XD Encapsulated HARPOON Certification and Training Vehicles, test equipment and services, spares and repair parts for support equipment, training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated cost is $200 million.

This proposed sale serves U.S. national economic and security interests by supporting the recipient's continuing efforts to modernize its armed forces. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

This sale is consistent with United States law and policy as expressed in Public Law 96-8. The U.S. is committed to providing military assistance under the terms of the Taiwan Relations Act.

The recipient uses HARPOON missiles to enhance its self-defense capabilities. The recipient has previously purchased both air and surface launched HARPOON missiles and will be able to absorb and effectively utilize these submarine-launched missiles.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the recipient.

The prime contractor will be McDonnell Douglas Company, a wholly owned subsidiary of Boeing Company in St. Louis, Missouri. Although the purchaser generally requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-46

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UGM-84L Sub-Launched HARPOON Block II missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Radar seeker
b. Global Positioning System/Inertial Navigation System (GPS/INS)
c. Operational Flight Program (OFP)
d. Missile operational characteristics and performance data
e. Guidance Control Unit
f. Costal Target Suppression

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–24398 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–47]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–47 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

OCT 0 3 2008
In reply refer to:
USP003415-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-47, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $250 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 12 million
Other	$238 million
TOTAL	$250 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** Upgrade of 4 E-2T Aircraft to the HAWKEYE 2000 configuration. The upgrade will include provisions for the Joint Tactical Information Distribution System, avionics, navigation and non-navigation upgrades, and aircraft electrical, mechanical, and survivability upgrades, all necessary hardware installations, support equipment, spares and repair parts, installation and training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support.

(iv) **Military Department:** Navy (GNN)

(v) **Prior Related Cases, if any:** numerous FMS cases pertaining to various services

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** OCT 03 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States – E-2T Retrofit Upgrade

The Taipei Economic and Cultural Representative Office in the United States has requested the upgrade of 4 E-2T Aircraft to the HAWKEYE 2000 configuration. The upgrade will include provisions for the Joint Tactical Information Distribution System, avionics, navigation and non-navigation upgrades, and aircraft electrical, mechanical, and survivability upgrades, all necessary hardware installations, support equipment, spares and repair parts, installation and training, publications and technical documents, U.S. Government and contractor technical assistance, and other related elements of logistics and program support. The estimated cost is $250 million.

This proposed sale serves U.S. national economic and security interests by supporting the recipient's continuing efforts to modernize its armed forces. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The recipient uses the aircraft to enhance its self-defense capabilities. The recipient has previously purchased E-2's and is updating these aircraft to meet the same configuration of the most recent purchase of E-2 HAWKEYE 2000 aircraft. This upgrade will simplify aircraft crew training, maintenance training and requirements, base-line spares, and increase safety of flight. The recipient will be able to effectively utilize the upgraded aircraft.

This sale is consistent with United States law and policy as expressed in Public Law 96-8. The U.S. is committed to providing military assistance under the terms of the Taiwan Relations Act.

Implementation of this proposed sale will require the assignment of six contractor representatives to the recipient for a not to exceed five year period.

The prime contractor will be Northrop Grumman Corporation, Bethpage, NY.

The purchaser requested offsets. At this time, agreements are undetermined and will be defined in negotiations between the purchaser and contractor.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-47

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The E-2 aircraft is a state-of-the-art surveillance aircraft. All upgraded hardware is unclassified. Some of the aircraft's software, publications, performance specifications, operational capability, vulnerabilities to countermeasures, and software documentation are classified up to Secret. The classified information to be provided to the customer consists of that which is necessary for the operation, maintenance, and repair of the E-2C aircraft and its installed systems and related software.

2. This upgrade merely upgrades the E-2T to the HAWKEYE 2000 configuration, which includes, safety of flight, maintainability, and sustainability improvements. These improvements also standardize all aircraft to the same configuration, which also simplifies operation and training requirements. No new sensors or upgrades to the sensor suite are being incorporated. However, the aircraft's operating system and equipment are classified Confidential after the software package is loaded.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–24400 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–83]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–83 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-06-M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 26 2008

In reply refer to:
USP008761-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-83, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost $15.2 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-83

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 8.3 billion
Other	$ 6.9 billion
TOTAL	$15.2 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: MDE includes: an initial 25 F-35 Joint Strike Fighter Conventional Take-Off and Landing (CTOL) aircraft with an option to purchase at a later date an additional 50 F-35 CTOL or Short Take-Off and Vertical Landing (STOVL) aircraft. All aircraft will be configured with either the Pratt and Whitney F-135 engines or General Electric-Rolls Royce F-136 engines. Other Aircraft Equipment includes: Electronic Warfare Systems; Command, Control, Communication, Computers and Intelligence/Communication, Navigational and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Autonomic Logistics Information System (ALIS); Flight Mission Trainer; Weapons Employment Capability, and other Subsystems, Features, and Capabilities; F-35 unique infrared flares; unique systems or sovereign requirements; reprogramming center, Hardware/Software In-the-Loop Laboratory Capability; External Fuel Tanks; and F-35 Performance Based Logistics. Also includes: software development/integration, flight test instrumentation, aircraft ferry and tanker support, support equipment, tools and test equipment, spares and repair parts, personnel training and training equipment, publications and technical documents, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics and program support. Non-MDE includes: software development/integration, flight test instrumentation, aircraft ferry and tanker support, support equipment, tools and test equipment,

*** as defined in Section 47(6) of the Arms Export Control Act.**

spares and repair parts, personnel training and training equipment, publications and technical documents, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics and program support.

(iv) Military Department: Air Force (SAC)

(v) Prior Related Cases, if any: none.

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: SEP 26 2008

POLICY JUSTIFICATION

Israel – F-35 Joint Strike Fighter Aircraft

The Government of Israel has requested a possible sale of an initial 25 F-35 Joint Strike Fighter Conventional Take-Off and Landing (CTOL) aircraft with an option to purchase at a later date an additional 50 F-35 CTOL or Short Take-Off and Vertical Landing (STOVL) aircraft. All aircraft will be configured with either the Pratt and Whitney F-135 engines or General Electric-Rolls Royce F-136 engines. Other aircraft equipment includes: Electronic Warfare Systems; Command, Control, Communication, Computers and Intelligence/Communication, Navigational and Identification (C4I/CNI); Autonomic Logistics Global Support System (ALGS); Autonomic Logistics Information System (ALIS); Flight Mission Trainer; Weapons Employment Capability, and other Subsystems, Features, and Capabilities; F-35 unique infrared flares; unique systems or sovereign requirements; reprogramming center, Hardware/Software In-the-Loop Laboratory Capability; External Fuel Tanks; and F-35 Performance Based Logistics. Also includes: software development/integration, flight test instrumentation, aircraft ferry and tanker support, support equipment, tools and test equipment, spares and repair parts, personnel training and training equipment, publications and technical documents, U.S. Government and contractor engineering and logistics personnel services, and other related elements of logistics and program support. The estimated cost is $15.2 billion.

Israel's strategic position makes it vital to the United States' interests throughout the Middle East. Our policy has been to promote Middle East peace, support Israeli commitment to peace with other regional Arab countries, enhance regional stability, and promote Israeli readiness and self-sufficiency. It is vital to the U.S. national interest to assist Israel to develop and maintain a strong and ready self-defense capability. This proposed sale is consistent with those objectives.

Israel needs these aircraft to augment its present operational inventory and to enhance its air-to-air and air-to-ground self-defense capability. Israel will have no difficulty absorbing these aircraft into its armed forces. The proposed sale will not affect the basic military balance in the region.

Implementation of this proposed sale will require multiple trips to Israel involving U.S. Government and contractor representatives for technical reviews/support, program management, and training over a period of 15 years. U.S. contractor representatives will be required in Israel to conduct Contractor Engineering Technical Services (CETS) and Autonomic Logistics and Global Support (ALGS) for after-aircraft delivery.

The prime contractors will be:

Lockheed Martin Aeronautics Company, Fort Worth, Texas
Pratt & Whitney Military Engines, East Hartford, Connecticut
General Electric/Fighter Engine Team, Cincinnati, Ohio

There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-83

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The F-35 Conventional Take-Off and Landing (CTOL) and Short Take-Off and Vertical Landing (STOVL) Block 3 aircraft is classified Secret, except as noted below. It contains current technology representing the F-35 low observable airframe/outer mold line, Pratt and Whitney F135 and/or General Electric Fighter Engine Team F136 engine(s), radar, integrated core processor central computer, mission systems/electronic warfare suite, a multiple sensor suite, operational flight and maintenance trainers, technical data/documentation, and associated software. As the aircraft and its subsystems are under development, many specific identifying equipment/system nomenclatures (i.e., M198) have not been assigned to date. Sensitive and classified elements of the F-35 CTOL and STOVL Block 3 aircraft include hardware, accessories, components, and associated software for the following major subsystems:

a. The Propulsion system is classified Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The single 40,000-lb thrust class engine is designed for low observability and has been integrated into the aircraft system (supplied by either the GE Rolls-Royce Fighter Engine Team (FET), with the F136, and Pratt & Whitney, with the F135, who are developing and producing engine turbo machinery compatible with the F-35 and assures highly reliable, affordable performance. The engines are designed to be utilized in all F-35 variants, providing unmatched commonality and supportability throughout the worldwide base of F-35 users. The Conventional Takeoff and Landing (CTOL) propulsion configuration consists of a main engine, diverterless supersonic inlet, and a Low Observable Axisymmetric Nozzle (LOAN).

b. The AN/APG-81 Active Electronically Scanned Array (AESA) provides mission systems with air-to-air and air-to-ground tracks which the mission system uses as a component to sensor fusion. The AESA allows the radar to direct RF energy in a way that does not expose the F-35, allowing it to maintain low observability in high-threat environments. The radar subsystem supports integrated system performance

for air-to-air missions by providing search, track, identification, and AIM-120 missile data link functionality. The radar also provides synthetic aperture radar mapping for locating surface targets and weather mapping for weather avoidance. The radar functions are tightly integrated, interleaved, and managed by an interface to sensor management functions within mission software. The hardware and software are classified Secret.

c. The Electro Optical Targeting System (EOTS) contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The EOTS subsystem to the sensor suite provides long-range detection; infrared targeting and tracking systems to support weapon employment. It incorporates a missile-quality Infrared Search and Track (IRST) capability, a Forward-Looking Infrared (FLIR) sensor for precision tracking, and Bomb Damage Indication (BDI) capability. EOTS replaces multiple separate internal or podded systems typically found on legacy aircraft. The functionality of the EOTS employs the following modes: Targeting FLIR; Laser Range-Finding and Target Designation; EO DAS and EOTS Performance.

d. The Electro-Optical Distributed Aperture System (EODAS) is a subsystem to the sensor suite and provides full spherical coverage for air-to-air and air-to-ground detection and Navigation Forward Looking Infrared (NFLIR) imaging. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The NFLIR capability provides infrared (IR) imagery directly to the pilot's Helmet-Mounted Display for navigation in total darkness, including takeoff and landing, and provides a passive IR input to the F-35's sensor fusion algorithms. The all-aspect missile warning function provides time-critical warnings of incoming missiles and cues other subsystems to provide effective countermeasure employment. EODAS also provides an IRST function that can create and maintain Situational Awareness-quality tracks (SAIRST). EODAS is a mid-wave Infrared (IR) system consisting of six identical sensors distributed around the F-35 aircraft. Each sensor has a corresponding airframe window panel integrated with the aircraft structure to meet aerodynamic and stealth requirements.

e. The Electronic Warfare (EW) system contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. Sensitive elements include: apertures; radio frequency (RF) and infrared (IR) countermeasures; and Electronic Countermeasures (ECM) techniques and features. The reprogrammable, integrated system provides radar warning and electronic support

measures (ESM) along with a fully integrated countermeasures (CM) system. The EW system is the primary subsystem used to enhance situational awareness, targeting support and self defense through the search, intercept, location and identification of in-band emitters and to automatically counter IR and RF threats. The IR and RF countermeasures are classified Secret. This system uses low signature-embedded apertures, located in the aircraft control surface edges, to provide direction finding and identification of surface and airborne emitters and the geo-location of surface emitters. The system is classified Secret.

f. The Command, Control, Communications, Computers and Intelligence/ Communications, Navigation, and Identification (C4I/CNI) system provides the pilot with unmatched connectivity to flight members, coalition forces, and the battlefield. It is an integrated subsystem designed to provide a broad spectrum of secure, anti-jam, covert voice and data communications, precision radio navigation and landing capability, self-identification, beyond visual range target identification, and connectivity with off-board sources of information. The functionality is tightly integrated within the mission system for enhanced efficiency and effectiveness in the areas of communications, navigation, identification, and sensor fusion. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret. The CNI function includes both Secret and Unclassified elements. Sensitive elements of the CNI subsystems include:

(1) The VHF/UHF Voice and Data (Plain and Secure) Communication functionality includes air-to-air UHF/VHF voice and data, both clear and secure, to provide communications with other friendly and coalition aircraft, air-to-ground UHF voice to provide communications with ground sites, and intercommunication voice and tone alerts to provide communications between the avionics system and the pilot. UHF/VHF downlink of air vehicle status and maintenance information is provided to notify the ground crews of the amounts and types of stores, fuel, and other supplies or equipment needed to quickly turn the aircraft for the next mission. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(2) The Tactical Air Navigation (TACAN) functionality provides operational modes to identify ground station and to provide bearing-to-station, slant range-to-ground station, bearing-to-airborne station and slant range to the nearest airborne station or aircraft. TACAN is not unique to the F-35 aircraft but is standard on most USAF aircraft. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(3) The Identification Friend or Foe Interrogator and Transponder Identification functionality consists of integrated Mark XII Identification Friend or Foe (IFF) transponder capability to provide identification of other friendly forces. The CNI system supports sensor fusion by supplying data from IFF interrogations and off-board sources through the intra-flight data link. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(4) The Global Positioning System Navigation functionality includes the Global Positioning System (GPS) aided inertial navigation to provide high-quality positional navigation, and the Instrument Landing System (ILS)/Tactical Air Control and Navigation (TACAN) to provide navigation and landing cues within controlled airspace. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(5) The Intra-Flight Data Link (IFDL) is used specifically for communications between F-35 aircraft and has a very low probability of intercept, contributing to covert operations. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(6) The Inertial Navigation System is an all-attitude, Ring Laser Gyro-based navigation system providing outputs of linear and angular acceleration, velocity, body angular rates, position, attitude (roll, pitch, and platform azimuth), magnetic and true heading, altitude, and time tags. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(7) The Radar Altimeter functionality is a module provided in the CNI system rack 3A and uses separate transmit and receive antennas. It measures and reports altitude, and altitude rate of change. Control data is transferred over to a configurable avionics interface card which translates the information to the F-35 aircraft computers. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(8) The Instrument Landing System (ILS) measures, and reports azimuth course and alignment, elevation course alignment, and distance to the runway. Data from the ILS is used to drive visual flight instrumentation. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

(9) The Tactical Data Links is a secure broadcast Tactical Digital Information Link (TADIL) used for real-time voice/data exchange for command and control, relative navigation, and Precise Position Location Identification (PPLI), providing Link-16 type capabilities. The system contains both Secret and Unclassified elements and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is classified Secret.

g. The F-35 Autonomic Logistics Information System (ALGS) includes both Secret and Unclassified elements. It provides a fully integrated logistics management solution. ALGS integrates a number of functional areas, including supply chain management, repair, support equipment, engine support, and training. The ALGS infrastructure employs a state-of-the-art information system that provides real-time, decision-worthy information for sustainment decisions by flight line personnel. Prognostic health monitoring technology is integrated with the air system and is crucial to the predictive maintenance of vital components.

h. The F-35 Autonomic Logistics Information System (ALIS) includes both Secret and unclassified elements. The ALIS provides an intelligent information infrastructure that binds all of the key concepts of ALGS into an effective support system. ALIS establishes the appropriate interfaces among the F-35 Air Vehicle, the warfighter, the training system, government information technology (IT) systems, JSF operations, and supporting commercial enterprise systems. Additionally, ALIS provides a comprehensive tool for data collection and analysis, decision support, and action tracking.

i. The F-35 Training System includes both Secret and unclassified elements. The Training System includes several types of training devices, to provide for integrated training of both pilots and maintainers. The pilot training devices include a Full Mission Simulator (FMS) and Deployable Mission Rehearsal Trainer (DMRT). The maintainer training devices include an Aircraft Systems Maintenance Trainer (ASMT), Ejection System Maintenance Trainer (ESMT), and Weapons Loading Trainer (WLT). The F-35 Training System can be integrated, where both pilots and maintainers learn in the same Integrated Training Center (ITC). Alternatively, the pilots and maintainers can train in separate facilities (Pilot Training Center and Maintenance Training Center).

j. Weapons employment capability is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is classified Secret. Sensitive elements include co-operative targeting.

k. Other Subsystems, Features, and Capabilities:

(1) The Low Observable Air Frame is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is classified Secret. Software (object code) is Secret. Sensitive elements include: the Radar Cross Section and its corresponding plots, construction materials and fabrication.

(2) The Integrated Core Processor (ICP) Central Computer is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is classified (Secret. Sensitive elements include: F-35 Integrated Core Processor utilizing Commercial Off the Shelf (COTS) Hardware and Module Design to maximize growth and allow for efficient Management of DMS and Technology Insertion), if additional processing is needed, a second ICP will be installed in the space reserved for that purpose, more than doubling the current throughput and memory capacity.

(3) The F-35 Helmet Mounted Display System (HMDS) is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: HMDS consists of the Display Management Computer-Helmet, a helmet shell/display module, a quick disconnect integrated as part of the ejection seat, helmet trackers and tracker processing, day- and night-vision camera functions, and dedicated system/graphics processing. The HMDS provides a fully sunlight readable, bi-ocular display presentation of aircraft information projected onto the pilot's helmet visor. The use of a night vision camera integrated into the helmet eliminates the need for separate Night Vision Goggles (NVG). The camera video is integrated with EO and IR imaging inputs and displayed on the pilot's visor to provide a comprehensive night operational capability.

(4) The Pilot Life Support System is Secret and contains technology representing the latest state-of-the-art in several areas. Information on performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: a measure of Pilot Chemical, Biological, and Radiological Protection through use of On Board Oxygen Generating System (OBOGS); and an escape system that provide additional protection to the pilot. OBOGS takes the Power and Thermal Management System (PTMS) air and enriches it by removing gases (mainly nitrogen) by adsorption, thereby increasing the concentration of oxygen in the product gas and supplying breathable air to the pilot.

(5) The Off-Board Mission Support System is Secret and contains technology representing the latest state-of-the-art in several areas. Information on

performance and inherent vulnerabilities is Secret. Software (object code) is Secret. Sensitive elements include: mission planning, mission briefing, maintenance/intelligence/ tactical debriefing, sensor/algorithm planning, EW system reprogramming, data debrief, etc.

l. Additional MDE - Unique Systems or Sovereign Requirements:

(1) The JSF Reprogramming Center is classified Secret and contains technology representing the latest state-of-the-art in several areas. This hardware/software facility provides a means to update JSF electronic warfare databases. Sensitive elements include: EW software databases and tools to modify these databases.

(2) HSIL Capability: A JSF Hardware/Software In-The-Loop (HSIL) laboratory is Secret and contains technology representing the latest state-of-the-art in several areas. This hardware/software facility allows reprogramming changes to be checked and verified to prevent system conflicts or errors. The entire system of systems is sensitive to loss and has limited access.

m. Publications: Manuals are considered Secret, special access required, as they contain information on aircraft/system performance and inherent vulnerabilities.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–24401 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–56]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–56 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

OCT 0 3 2008

In reply refer to:
USP004839-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-56, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $3.1 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-56

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) **Total Estimated Value**:

Major Defense Equipment*	$2.4 billion
Other	$ .7 billion
TOTAL	$3.1 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: 330 PATRIOT Advanced Capability (PAC-3) missiles, 4 AN/MPQ-65 Radar Sets, 2 Tactical Command Stations, 2 Information and Coordination Centrals, 6 Communication Replay Groups, 4 Engagement Control Stations, 24 Launching Stations, 12 Antenna Mast Groups, 282 Single Channel Ground and Airborne Radio System (SINCGARS) (115 AN/VRC-88E, 96 AN/VRC-90E, 13 AN/VRC-91E, and 58 AN/VRC-92E), 9 Electronic Power Plant III (EPP), 50 Multifunctional Information Distribution Systems (MIDS), battery and battalion maintenance equipment, prime movers, generators, electrical power units, personnel training and equipment, trailers, communication equipment, tool and test sets, spare and repair parts, publications, supply support Quality Assurance Team support services, U.S. Government and contractor engineering and logistics services, technical documentation, and other related elements of logistics support.

(iv) **Military Department**: Army (YYV, Amd #1)

(v) **Prior Related Cases, if any**: FMS Case YYV-$600M-21Dec07

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: None.

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex Attached.

(viii) **Date Report Delivered to Congress**: OCT 0 3 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States - PATRIOT Advanced Capability-3 Guided Missiles

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 330 PATRIOT Advanced Capability (PAC-3) missiles, 4 AN/MPQ-65 Radar Sets, 2 Tactical Command Stations, 2 Information and Coordination Centrals, 6 Communication Replay Groups, 4 Engagement Control Stations, 24 Launching Stations, 12 Antenna Mast Groups, 282 Single Channel Ground and Airborne Radio System (SINCGARS) (115 AN/VRC-88E, 96 AN/VRC-90E, 13 AN/VRC-91E, and 58 AN/VRC-92E), 9 Electronic Power Plant III (EPP), 50 Multifunctional Information Distribution Systems (MIDS), battery and battalion maintenance equipment, prime movers, generators, electrical power units, personnel training and equipment, trailers, communication equipment, tool and test sets, spare and repair parts, publications, supply support Quality Assurance Team support services, U.S. Government and contractor engineering and logistics services, technical documentation, and other related elements of logistics support. The estimated cost is $3.1 billion.

This sale is consistent with United States law and policy as expressed in Public Law 96-8. The U.S. is committed to providing military assistance under the terms of the Taiwan Relations Act.

This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and enhance its defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The recipient will use the PAC-3 missiles to enhance it self-defense capabilities. The recipient has not previously purchased PAC-3 missiles, but will be able to absorb and effectively utilize these missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Raytheon Corporation in Andover, MA, and Lockheed-Martin in Dallas, TX. At this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require temporary assignment of U.S. Government and contractor representatives in country. There will be several U.S. Government representatives for 2-week intervals twice annually to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-56

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The PATRIOT Air Defense System contains classified Secret components and critical/sensitive technology. The PATRIOT Advanced Capability-3 (PAC-3) Missile Four-Pack is classified Confidential. With the incorporation of the PAC-3 missile, the PATRIOT System will continue to hold a significant technology lead over other surface-to-air missile systems in the world.

2. The PAC-3 Missile sensitive/critical technology is in the area of design and production know-how and primarily inherent in the design, development and/or manufacturing data related to certain components. Information on system performance capabilities and effectiveness, select software documentation, and test data are classified up to Secret.

3. AIT and TECRO signed a Patriot PAC-3/Configuration 3 Security Agreement on 14 December 2007. The US requires such an agreement as an additional measure to safeguard classified and sensitive information, equipment and technology prior to entering into the sale of Configuration 3 to any international customer.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–24402 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–92]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–92 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 26 2008
In reply refer to:
USP010660-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-92, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Brazil for defense articles and services estimated to cost $525 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-92

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Brazil

(ii) **Total Estimated Value:**

Major Defense Equipment*	$375 million
Other	$150 million
TOTAL	$525 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 15 UH-60L BLACK HAWK helicopters with 30 T-700-GE-701C engines, 2 spare T-700-GE-701C engines, external and internal fuel tanks, warranty, internal and external hoist kits, weather radar, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support.

(iv) **Military Department:** Army (UUC)

(v) **Prior Related Cases, if any:**
FMS case UUB - $158 million - pending
FMS case UTZ - $175 million - 30Dec04

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** SEP 26 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Brazil – UH-60L BLACK HAWK Helicopters

The Government of Brazil has requested a possible sale of 15 UH-60L BLACK HAWK helicopters with 30 T-700-GE-701C engines, 2 spare T-700-GE-701C engines, external and internal fuel tanks, warranty, internal and external hoist kits, weather radar, spare and repair parts, tools and support equipment, publications and technical data, personnel training and training equipment, contractor engineering and technical support services and other related elements of logistics support. The estimated cost is $525 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in South America.

Brazil needs these aircraft to fulfill its strategic commitments for search and rescue and self-defense within the region without being dependent upon assistance from other countries. This procurement will upgrade its air mobility capability and provide for the defense of vital installations and close air support for ground forces. Brazil will have no difficulty absorbing these helicopters into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Sikorsky Aircraft (United Technologies) Corporation of Stratford, Connecticut and General Electric Engines of Lynn, Massachusetts. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two contractor representatives to Brazil for a period of up to two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-92

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The UH-60L BLACK HAWK weapon system contains communications and identification equipment, navigation equipment, displays and sensors. The aircraft itself does not contain sensitive technology. The highest level of classified information required to be released for training, operation, and maintenance of the BLACK HAWK helicopter is Confidential. The highest level that could be revealed through reverse engineering or testing of the end item is Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–24403 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–57]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–5 7 with attached transmittal, and policy justification.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

OCT 0 3 2008
In reply refer to:
USP004981-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-57, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $334 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	**Senate**
Committee on Foreign Affairs	**Committee on Foreign Relations**
Committee on Armed Services	**Committee on Armed Services**
Committee on Appropriations	**Committee on Appropriations**

Transmittal No. 08-57

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser**: Taipei Economic and Cultural Representative Office in the United States pursuant to P.L. 96-8

(ii) **Total Estimated Value**:

Major Defense Equipment*	$ 0 million
Other	$334 million
TOTAL	$334 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: This sale provides funds for the establishment of a blanket order requisition case for follow-on spare parts in support of F-5E/F, C-130H, F-16A/B, and Indigenous Defense Fighter IDF aircraft, communication equipment, radar, and other related elements of logistics support.

(iv) **Military Department**: Air Force (RAI, KDK)

(v) **Prior Related Cases, if any**: FMS Case KDH-$228M-25Feb02

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: None.

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: None.

(viii) **Date Report Delivered to Congress**: OCT 03 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States –Blanket Order Requisition Case

The Taipei Economic and Cultural Representative Office in the United States has requested a proposed sale which provides funds for the establishment of a blanket order requisition case for follow-on spare parts in support of F-5E/F, C-130H, F-16A/B, and Indigenous Defense Fighter IDF aircraft, communication equipment, radar, and other related elements of logistics support. The estimated cost is $334 million.

This sale is consistent with United States law and policy as expressed in Public Law 96-8.

This proposed sale serves U.S. national economic and security interests by supporting the recipient's continuing efforts to modernize its armed forces and enhance its defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

These spare parts are required to assure that aircraft and aircraft systems previously procured from the United States are maintained in a mission capable status. The recipient will have no difficulty utilizing these additional spare parts.

Procurement of these items will be from the many contractors providing similar items to the U.S. armed forces. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–24404 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–70]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–70 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

OCT 0 3 2008

In reply refer to:
USP007907-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-70, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $47 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-70

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Taipei Economic and Cultural Representative Office in the United States

(ii) **Total Estimated Value:**

Major Defense Equipment*	$43 million
Other	$ 4 million
TOTAL	$47 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 182 JAVELIN guided missile rounds and 20 JAVELIN command launch units, 40 JAVELIN missile simulation rounds, trainers, rechargeable and non-rechargeable batteries, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, Quality Assurance Team support services, and other related elements of logistics support.

(iv) **Military Department:** Army (YZD)

(v) **Prior Related Cases, if any:** FMS case YWG-$38M-8Jul02

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** OCT 03 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States – JAVELIN Guided Missile Systems

The Taipei Economic and Cultural Representative Office in the United States has requested a possible sale of 182 JAVELIN guided missile rounds and 20 JAVELIN command launch units, 40 JAVELIN missile simulation rounds, trainers, rechargeable and non-rechargeable batteries, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, Quality Assurance Team support services, and other related elements of logistics support. The estimated cost is $47 million.

This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

This sale is consistent with United States law and policy as expressed in Public Law 96-8. The U.S. is committed to providing military assistance under the terms of the Taiwan Relations Act.

The recipient will use these JAVELIN missile systems to enhance its direct fire capability for infantry, cavalry, and commando units against armored vehicles, buildings and field fortifications. This system will provide the recipient with a strong man-portable direct fire capability and a credible defense that is critical to successful operations. The recipient previously acquired JAVELIN from the United States in 2002 and will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon/Lockheed-Martin JAVELIN Joint Venture in Orlando, Florida. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team consisting of one contractor and two U.S. Government representatives in country for five days to accomplish the initial deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-70

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The JAVELIN Weapon System hardware and the documentation provided with the proposed sale are Unclassified. However, sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs, which instruct the system on how to operate in the presence of countermeasures.

2. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major components: a reusable command launch unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. The JAVELIN's key technical feature is the use of fire-and-forget technology that allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. JAVELIN is Unclassified; however, information associated with the system is classified up to the Secret level.

3. The software programs contained in the JAVELIN Weapon System are in the form of microprocessors equipped with available Read Out Memory maps. However, the system does not allow access to the actual software program. The overall hardware is considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure developments.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–24405 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–93]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–93 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 26 2008

In reply refer to:
USP010662-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-93, concerning the Department of the Air Force's proposed Letters(s) of Offer and Acceptance to Greece for defense articles and services estimated to cost 133 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with the principles set forth in subsection 620C(b) of that Act as codified in section 2373 of title 22, United States Code.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Section 620C(d)

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-93

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Greece

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 3 million
Other	$130 million
TOTAL	$133 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 50 Enhanced PAVEWAY II kits for use with MK-84 Warheads and continuation of sustainment support for the Hellenic Air Force F-16 which includes Electronic Combat International Security Assistance Program services, Technical Coordination Program services, minor modifications, repair and return, Aircraft Structural Integrity Program services, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistical support.

(iv) **Military Department:** Air Force (YDV, Amd 1 and QCE)

(v) **Prior Related Cases, if any:**
FMS case YDV - $166 million – 30Nov07
FMS case QBY - $ 93 million - 20May04

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(viii) **Date Report Delivered to Congress:** SEP 26 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece – Enhanced PAVEWAY II Kits and Sustainment Support for F-16 Aircraft

The Government of Greece has requested a possible sale of 50 Enhanced PAVEWAY II kits for use with MK-84 Warheads and continuation of sustainment support for the Hellenic Air Force F-16 which includes Electronic Combat International Security Assistance Program services, Technical Coordination Program services, minor modifications, repair and return, Aircraft Structural Integrity Program services, spare and repair parts, support equipment, publications and technical documentation, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistical support. The estimated cost is $133 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving Greece's military capabilities and furthering weapon system standardization and interoperability with U.S. forces.

The Government of Greece needs this capability for mutual defense, regional security, modernization, and interoperability with the U.S. and other North Atlantic Treaty Organization (NATO) countries. The modernization of Greece's F-16 fleet will increase the effectiveness of its contribution and capabilities to future NATO, coalition, and anti-terrorism operations. This will also enhance Greece's ability to patrol its extensive coastline and borders against future threats, and will contribute to the War on Terrorism and to NATO operations. This modernization will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, and as embodied in the Letter of Offer and Acceptance.

The proposed sale of these weapons and support will bring overall standoff performance up to existing regional baselines. Greece will have no difficulty absorbing these weapons and support into its armed forces.

This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question.

The principal contractors will be: Raytheon Missile Systems in Tucson, Arizona; Lockheed Martin Aeronautics Company in Fort Worth, Texas; Lockheed Martin Missiles and Fire Control in Dallas, Texas; Northrop-Grumman Electro-Optical Systems in Garland, Texas; Northrop-Grumman Electronic Systems in Baltimore, Maryland. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of U.S. Government or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-93

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Enhanced PAVEWAY II modification improves the existing PAVEWAY II Laser Guided Bomb (LGB) by adding an additional Global Positioning System (GPS) guidance unit to the current LGB Control system. The nomenclature for the 2000 lb variant (MK-84) of this weapon is the Enhanced Guided Bomb Unit (EGBU-10). The EGBU allows the user to employ the weapon as a traditional LGB, using end game terminal laser guidance for precision strike during favorable weather conditions, day or night. With the added Global Positioning System (GPS) feature, the weapon can be employed during all weather conditions where laser employment may not be feasible for terminal guidance. An additional benefit to the GPS guidance is increased range. The basic PAVEWAY II is classified Confidential (Pulse Interval Modulation and doublet coding are not releasable); technical data for the EGBU is classified up to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

CERTIFICATION PURSUANT TO SECTION 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to Section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 and State Department Delegation of Authority No. 145, I hereby certify that the sale of defense articles and defense services, to include, 50 Enhanced PAVEWAY II kits for use with MK-84 Warheads and continuation of sustainment support for the Hellenic Air Force F-16 which includes Electronic Combat International Security Assistance Program services, Technical Coordination Program services, minor modifications, repair and return, Aircraft Structural Integrity Program services, and other related elements of logistical support, to the Government of Greece is consistent with the principles set forth in Section 620C(b) of the Act.

This certification will be made part of the notification to Congress in accordance with Section 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John C. Rood
Acting Under Secretary of State for Arms Control and International Security

[FR Doc. E8–24406 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–102]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–102 with attached transmittal, and policy justification.

Dated: October 7, 2008

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
2800 DEFENSE PENTAGON
WASHINGTON, DC 20301-2800

SEP 26 2008

In reply refer to:
USP014449-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-102, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to France for defense articles and services estimated to cost $400 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Jeffrey A. Wieringa
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-102

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** France

(ii) **Total Estimated Value:**

Major Defense Equipment*	$332 million
Other	$ 68 million
TOTAL	$400 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** upgrade of four E-3F Airborne Warning and Control Systems (AWACS) Aircraft with Block 40/45 Mission Computing, Electronic Support Measures (ESM) and Radar System Improvement Program (RSIP) Interface, and Mode 5/S Identification Friend or Foe (IFF). In addition, this proposed sale will include related spare and repair parts, support equipment, publications and technical documentation, integration, personnel training and equipment, contractor engineering and technical support services, and other related elements of program support.

(iv) **Military Department:** Air Force (QAD)

(v) **Prior Related Cases, if any:**
FMS case NBS-$81M-25Jun97
FMS case QBM-$184M-16Jul02

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** None

(viii) **Date Report Delivered to Congress:** SEP 26 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

France – Upgrade E-3F AWACS Aircraft with Block 40/45 Mission Computing

The Government of France has requested a possible sale to upgrade four E-3F Airborne Warning and Control Systems (AWACS) Aircraft with Block 40/45 Mission Computing, Electronic Support Measures (ESM) and Radar System Improvement Program (RSIP) Interface, and Mode 5/S Identification Friend or Foe (IFF). In addition, this proposed sale will include related spare and repair parts, support equipment, publications and technical documentation, integration, personnel training and equipment, contractor engineering and technical support services, and other related elements of program support. The estimated cost is $400 million.

France is one of the major political and economic powers in Europe and NATO and an ally of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist France to develop and maintain a strong and ready self-defense capability.

France previously purchased four sets of AWACS mission equipment and needs this upgrade to maintain interoperability and interchangeability with U.S. and other NATO coalition partners. Also, this upgrade will greatly improve the Air Force's capability to contribute to the Global War on Terrorism and NATO operations. France will have no difficulty absorbing the additional AWACS aircraft into its armed forces.

The prime contractor will be Boeing Integrated Defense Systems in Seattle, Washington. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government and contractor representatives to France.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. E8–24407 Filed 10–14–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Task Force on Sexual Assault in the Military Services

AGENCY: Office of the Assistant Secretary of Defense (Personnel and Readiness); DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in Government Act of 1976 (5 U.S.C. 522b, as amended), 41 CFR 102–3.140 and 41 CFR 102–3.150, announcement is made of the following committee meeting of the Defense Task Force on Sexual Assault in the Military Services (hereafter referred to as the Task Force).

DATES: October 30, 2008 from 8 a.m. to 5 p.m. Central Standard Time (hereafter referred to as CST).

ADDRESSES: Lincolnshire Marriott Resort, Salon A, 10 Marriott Drive, Lincolnshire, Illinois 60069.

FOR FURTHER INFORMATION CONTACT: Colonel Jackson-Chandler, Designated Federal Officer, Defense Task Force on Sexual Assault in the Military Services, 2850 Eisenhower Avenue, Suite 100, Alexandria, Virginia 22314; Telephone: (703) 325–6640; Fax: 703–325–6710/6711; DSN number 221–6640; e-mail: *cora.chandler@wso.whs.mil*.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of this open meeting is to obtain and discuss information on the Task Force's congressionally mandated task to examine matters related to sexual assault in the military services through briefings and discussion from the Task Force Sub-committees, Department of Defense (DoD), other subject matter experts, and the general populace.

Agenda

Thursday, October 30, 2008

8 a.m.–8:05 a.m. Welcome
Col Cora Jackson, Chandler, USAF, Executive Director, DTFSAMS
8:05 a.m.–8:15 a.m. Opening Remarks
Dr. Louis Iasiello, DTFSAMS Co-Chair
8:15 a.m.–10 a.m. Qualitative and Quantitative Data Analysis
Dr. Rachel Lipari, Ph.D., Defense Manpower Data Center
10 a.m.–10:15 a.m. Break
10:15 a.m.–12 p.m. Today's Military Culture
Dr. Laura Miller, Rand Corporation
12 p.m.–1 p.m. Lunch On Your Own
1 p.m.–3 p.m. Task Force Open Discussion
Ms. Lonnie Weiss, Facilitator, Weiss Consulting
3 p.m.–3:15 p.m. Break
3:15 p.m.–4:45 p.m. Public Comment
Ms. Lonnie Weiss, Facilitator, Weiss Consulting
4:45 p.m.–5 p.m. Wrap Up
Ms. Debbie Gray, SAPR Analyst

The Task Force's meeting will be held at Lincolnshire Marriott Resort, Salon A, 10 Marriott Drive, Lincolnshire, Illinois 60069 from 8 a.m. to 5 p.m. CST, Thursday October 30, 2008. The meeting is open to the public pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space.

Pursuant to 41 CFR 102–3.105(j), 102–3.140(c), section 10(a)(3) of the Federal Advisory Committee Act, as amended, and subject to the procedures outlined in this notice any member of the public or interested organization may submit a written statement to the Defense Task Force on Sexual Assault in the Military Services membership about the stated agency and/or to give input as to the mission and function of the task force. Though written statements may be submitted at any time for consideration or in response to a stated agenda to a planned meeting, statements must be received in a timely fashion for consideration at a specific meeting.

All written statements intended to be considered for the meeting that is subject to this notice shall be submitted to the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services no later than 5 p.m. Eastern Standard Time (hereafter referred to as EST), October 21, 2008. This individual will review all timely submitted written statements and will provide those statements to the task force membership for consideration.

Persons desiring to make an oral presentation to the committee must notify the Designated Federal Officer no later than 5 p.m. EST, October 21, 2008. Oral presentations by members of the public will be permitted only on October 30, 2008, from 3:15 p.m. until 4:45 p.m. before the full task force. Presentations will be limited to ten (10) minutes each. Number of oral presentations to be made will depend on the number of requests received from members of the public and the time allotted.

Each person desiring to make an oral presentation must provide the Designated Federal Officer for the Defense Task Force on Sexual Assault in the Military Services with one (1) written copy of the presentation by 5 p.m. EST, October 21, 2008 and bring 15 written copies of any material that is intended for distribution at the meeting. Contact information for the Designated Federal Officer is provided in this notice or can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR § 102–3.150, will announce planned meetings of the Defense Task Force on Sexual Assault in the Military Services. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements and/or live testimony that are in response to the stated agenda for the planned meeting in question.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–24395 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice of open meeting.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, this notice announces a meeting of the Department of Defense Historical Advisory Committee. The committee will discuss the report and recommendations of the Secretary of the Navy's Advisory Subcommittee on Naval History. The meeting will be open to the public.

DATES: Wednesday, November 5, 2008 at 10 a.m.

ADDRESSES: The meeting will be held on the 15th Floor, Room 2, 1777 North Kent Street, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Ms. Carolyn Thorne at 703–588–7890 or Ms. Pamela Bennett at 703–588–7889 for information or upon arrival at the building in order to be admitted.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–24482 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). A meeting of the Strategic Environmental Research and Development Program (SERPD), Scientific Advisory Board will be held on October 28–30, 2008. The topic of the meeting is to review new start and continuing research and development projects requesting Strategic Environmental Research and Development Program funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: Tuesday, October 28, 2008 from 9 a.m. to 5 p.m., Wednesday, October 29, 2008 from 9 a.m. to 5 p.m., and Thursday, October 30, 2008 from 8:30 a.m. to 3 p.m.

ADDRESSES: SERDP Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–24392 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0126]

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend five systems of records.

SUMMARY: The Office of the Inspector General (OIG) is amending five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 14, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Chief, FOIA/PA Office, Inspector General, Department of Defense, 400 Army Navy Drive, Room 201, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Keith Mastromichalis at (703) 604–8723.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General (OIG) systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 7, 2008.

Patricia L. Toppings,

Federal Register Liaison Officer, Department of Defense.

CIG–04

SYSTEM NAME:

Case Control System—Investigative (May 31, 2006, 71 FR 30878).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''The database is composed of records of investigations to include Reports of Investigation, Information Reports and Case Summaries, which are being or have been conducted by the OIG.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Inspector General Act of 1978, (Pub. L. 452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By name or Social Security Number''.

SAFEGUARDS:

Delete entry and replace with ''Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know. Electronic data system is password protected.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Electronic records are retained indefinitely for statistical purposes. Paper records are destroyed after one year''.

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Internal Operations Directorate, Defense Criminal Investigative Service, Office of the Inspector General for Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

CIG–04

SYSTEM NAME:

Case Control System—Investigative.

SYSTEM LOCATION:

Primary location: Office of the Inspector General, Department of Defense, Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service (DCIS), 400 Army Navy Drive, Arlington, VA 22202–4704.

Decentralized locations: Office of the Deputy Inspector General for Investigations/ Defense Criminal Investigative Service Field Offices, Resident Agencies, and Posts of Duty have temporary control over portions of the records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person or activity which is or has been the subject of an OIG investigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), address, records of investigations to include Reports of Investigation, Information Reports and Case Summaries, which are being or have been conducted by the OIG.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, (Pub. L. 452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense; and E.O. 9397 (SSN).

PURPOSE(S):

The file contains open and closed case listings used to manage investigations, to produce statistical reports, and to control various aspects of the investigative process. Users are OIG employees. Used to determine the existence, location, and status of cases, control workload, and to prepare statistical reports. The records in this system are used for the following purposes: Suitability, loyalty, eligibility, and general trustworthiness of individuals for access or continued access to classified information and suitability for access to government facilities or industrial firms engaged in government projects/contracts; contractor responsibility and suspension/debarment determinations; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to identify offenders, to provide facts and evidence upon which to base prosecution, to provide information to other investigative elements of the Department of Defense having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters; to effect corrective administrative action and to recover money and property which has been wrongfully used or misappropriated; to make statistical evaluations and reports; to make decisions affecting personnel actions concerning members of the Armed Forces and or Federal employees; and to respond to other complaint investigations and congressional inquires as appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Secret Service in conjunction with the protection of persons under its jurisdiction.

To other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or other Federal law enforcement agencies for the purpose of coordinating and conducting administrative inquiries and civil and criminal investigations, or when responding to such offices, Council, and agencies in connection with the investigation of potential violations of law, rule, and/or regulation.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or the Department of Justice for purposes of conducting external reviews to ensure that adequate internal safeguards and management procedures continue to exist within the Office of the Inspector General of the Department of Defense.

The 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know. Electronic data system is password protected.

RETENTION AND DISPOSAL:

Electronic records are retained indefinitely for statistical purposes. Paper records are destroyed after one year.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Internal Operations Directorate, Defense Criminal Investigative Service, Office of the Inspector General for Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number (SSN), current home address, telephone number and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704. Written request should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number (SSN), current home address, telephone number and the request must be signed.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

OIG System Administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

CIG–06

SYSTEM NAME:

Investigative Files (June 5, 2006, 71 FR 32313).

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Internal Operations Directorate, Defense Criminal Investigative Service, Office of the Inspector General for Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

CIG–06

SYSTEM NAME:

Investigative Files.

Primary location: Office of the Inspector General, Department of Defense, Office of the Deputy Inspector General for Investigations, Defense Criminal Investigative Service (DCIS), 400 Army Navy Drive, Arlington, VA 22202–4704.

Decentralized locations: Defense Criminal Investigative Service Field Offices, Resident Agencies, and Posts of Duty.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD civilian personnel; members of the Armed Forces of the United States, Reserve components, and National Guard units; DoD contractors; individuals residing on, having authorized official access to, or contracting or operating any business or other functions at any DoD installation or facility; and individuals not affiliated with the Department of Defense when their activities have directly threatened the functions, property or personnel of the Department of Defense, or they have threatened any other high ranking government personnel who are provided protective service mandated by the Secretary of Defense, or they have engaged in, or are alleged to engage in criminal acts on DoD installations or directed at the Department of Defense, its personnel or functions; or individuals information regarding DoD activities falling under the purview of OIG responsibilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of Investigations (ROIs), Information Reports (IRs) and criminal intelligence reports containing statements of witnesses, suspects, subject(s) and special agents; laboratory reports, polygraph records to include charts, reports, technical data, rights waivers, polygraph waivers, numerical score sheets, interview logs, test questions sheets, and all other documents relating to the polygraphs, all consensual or non consensual monitoring, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; investigative information from Federal, State, and local investigative and intelligence agencies and departments and all correspondence relevant to the investigation, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects witnesses and victims of crimes, report number which allows access to records noted above; agencies, firms, and Defense Department organizations which were the subject(s) or victim(s) of criminal investigations; and disposition and suspense of offenders listed in criminal investigative files, agents notes, working papers, confidential source documents, subpoenas, Grand Jury documents, finger print cards, witness identification data, requests approvals for case openings and or closings, special investigative techniques requiring approval by management, and any other miscellaneous documents supporting the case files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense; and E.O. 9397 (SSN).

PURPOSE(S):

To conduct criminal investigations, crime prevention and criminal intelligence activities, to accomplish management studies involving the analysis, compilation of statistics, quality control, to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism. Includes personnel security, internal security, criminal, and other law enforcement matters, all of which are essential to the effective operation of the Office of the Inspector General, DCIS. The records in this system are used for the following purposes: Suitability, loyalty, eligibility, and general trustworthiness of individuals for access or continued access to classified information and suitability for access to government facilities or industrial firms engaged in government projects/contracts; contractor responsibility and suspension/debarment determinations; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; to identify offenders, to provide facts and evidence upon which to base prosecution, to provide information to other investigative elements of the Department of Defense having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations including statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters; to effect corrective administrative action and to recover money and property which has been wrongfully used or misappropriated; to make statistical evaluations and reports; to make decisions affecting personnel actions concerning members of the Armed Forces and or Federal employees; and to respond to other complaint investigations and congressional inquires as appropriate.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Secret Service in conjunction with the protection of persons under its jurisdiction.

To other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest in criminal law enforcement investigations includes statutory violations, counter-intelligence, counter-espionage and counter-terrorist activities and other security matters.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or other Federal law enforcement agencies for the purpose of coordinating and conducting administrative inquiries and civil and criminal investigations, or when responding to such offices, Council, and agencies in connection with the investigation of potential violations of law, rule, and/or regulation.

To other Federal Inspector General offices, the President's Council on Integrity and Efficiency, and/or the Department of Justice for purposes of conducting external reviews to ensure that adequate internal safeguards and management procedures continue to exist within the Office of the Inspector General of the Department of Defense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in file folders and on electronic storage media.

RETRIEVABILITY:

Records are retrieved by individual's name, Social Security Number (SSN), or case control number.

SAFEGUARDS:

The primary storage location and some decentralized locations are in buildings protected by guards during non-duty hours. All OIG records are stored in locked safes and are accessible only to authorized personnel who have a need-to-know in conjunction with their official duties. Computerized listings are password protected.

RETENTION AND DISPOSAL:

Investigative Case files and Information Reports are maintained in the office of origin for two years after case closure and then transferred to the OIG DoD Headquarters for preparation and final transfer to the Washington National Records Center where they are retained for 20 years and 10 years, respectively, and ultimately destroyed.

Those records which attract great public or judicial attention or document a historical development in the OIG DoD may be deemed permanent and transferred directly to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Internal Operations Directorate, Defense Criminal Investigative Service, Office of the Inspector General for Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name (including former names and aliases), and Social Security Number (SSN), current home address, and telephone number, and the request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written requests should contain the individual's full name (including former names and aliases), and Social Security Number (SSN), current home address, and telephone number, and the request must be signed.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subjects and suspects of OIG investigations. Interview of witnesses, victims, and confidential sources. All types of records and information maintained by all levels of government, private industry, and non-profit organizations reviewed during the course of the investigation or furnished to the OIG. Any other type of record deemed necessary to complete the OIG investigation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency that performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

CIG–11

SYSTEM NAME:

Budget Information Tracking System (BITS) (June 14, 2006, 71 FR 34314).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Office of the Comptroller, Office of Administration and Management, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

PURPOSE:

Delete entry and replace with ''Information is used in determining current year execution and future budgetary requirements for the OIG, such as: tracking temporary duty travel costs, Permanent Change of Station costs, cash award or overtime costs and maintain spreadsheets by Human Resources Training/purchase cardholders.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''By name and Social Security Number.''

SAFEGUARDS:

Delete entry and replace with ''Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know. Electronic data system is password protected.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Comptroller, Office of Administration and Management, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

CIG–11

SYSTEM NAME:

Budget Information Tracking System (BITS).

SYSTEM LOCATION:

Office of the Comptroller, Office of Administration and Management, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Office of the Inspector General (OIG) employees, contractors, or other personnel sponsored by the OIG who participate in OIG Travel, Permanent Change of Station, Awards, Overtime/Compensation Time, Training, and programs with entitlement to reimbursable expenses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), grade and or rank, street

address, financial transaction document number, and the cost records of the personnel who have been approved for Temporary Duty; Permanent Change of Station (PCS); an employee cash award; reimbursement for miscellaneous expenses; and Overtime/Compensatory Time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95–452, the Inspector General Act of 1978, as amended; 5 U.S.C. 301, Departmental Regulations; DoD 7000.14–R, DoD Financial Management Regulation; DoD Directive 5106.1, Inspector General of the Department of Defense; OIG DoD Instruction 7200.1, Budget and Fund Control; OIG DoD Instruction 7250.13, Official Representation Funds; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used in determining current year execution and future budgetary requirements for the OIG, such as: tracking temporary duty travel costs, Permanent Change of Station costs, cash award or overtime costs and maintain spreadsheets by Human Resources Training/purchase cardholders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know. Electronic data system is password protected.

RETENTION AND DISPOSAL:

Records are maintained for current fiscal year. Destroy 6 years and 3 months after the close of the fiscal year.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Office of Administration and Management, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number (SSN) of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number (SSN) of the individual.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Data maintained in the system is obtained directly from the individual on the following forms:

a. Request for Temporary Duty Travel Form, provided to the Travel Branch, Administration and Logistics Services Directorate, with information obtained from the individual traveler;

b. Request for Permanent Change of Station Form, provided by the Travel Branch, Administration and Logistics Services Directorate, with information obtained from the individual;

c. Request for Training Form, provided by the Training Officer within each segment of the Office of the Deputy Inspector General with information obtained from the individual; and

d. Request for reimbursement of miscellaneous expenses (DD Form 1164 or SF 1034) provided by respective budget point of contact within each office of the Deputy Inspector General with information obtained from the individual.

To the extent that a follow-up to resolve discrepancies is required, information is collected directly from the individual or the appropriate office within the Office of the Inspector General on Department of Defense (DD) Forms 1610 and 1614, Standard Form 182, and IG Form 1400.430–3.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

CIG–15

SYSTEM NAME:

Senior Official and Reprisal Investigation Case System (June 5, 2006, 71 FR 32307).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Directorates for Investigations of Senior Officials, Military Reprisal Investigations, and Civilian Reprisal Investigations, Office of the Assistant Inspector General for Administrative Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Office of the Assistant Inspector General for Administrative Investigations, Office of the Deputy Inspector General for Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

CIG–15

SYSTEM NAME:

Senior Official and Reprisal Investigation Case System.

SYSTEM LOCATION:

Directorates for Investigations of Senior Officials, Military Reprisal Investigations, and Civilian Reprisal Investigations, Office of the Assistant Inspector General for Administrative Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals who provide initial complaints resulting in administrative

investigations conducted by Office of the Deputy Inspector General for Investigations (ODIG–INV) related to violations of laws, rules, or regulations or mismanagement, gross waste of funds, abuse of authority, or a danger to the public health and safety; subjects of administrative investigations conducted by the ODIG–INV; or individuals identified as having been adversely affected by matters under investigation by the ODIG–INV.

CATEGORIES OF RECORDS IN THE SYSTEM:

Materials relating to allegations received and documentation created as a result of action by the Office of the Inspector General, including reports, records of action taken, and supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (Pub. L. 95–452), as amended; and DoD Directive 5106.1 (32 CFR part 376).

PURPOSE(S):

To record complaints, allegations of wrongdoing, and requests for assistance; to document inquiries, research facts and circumstances, sources of information, conclusions and recommendations; to record actions taken and notifications of interested parties and agencies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual names or case numbers.

SAFEGUARDS:

Records are maintained in locked rooms accessible only to Office of the Deputy Inspector General for Investigations personnel having official need-to-know and electronic data system is password protected.

RETENTION AND DISPOSAL:

Destroy when 10 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Assistant Inspector General for Administrative Investigations, Office of the Deputy Inspector General for Investigations, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number, current home address, telephone number and the request must be signed. Also, requests submitted on behalf of other persons must include their written authorization.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

Written request should contain the individual's full name (including former names and aliases) date and place of birth, Social Security Number, current home address, telephone number and the request must be signed. Also, requests submitted on behalf of other persons must include their written authorization.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information was obtained from sources, subjects, witnesses, all levels of government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files (May 31, 2006, 71 FR 30882).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''DoD Hotline Division, Office of the Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Public Law 95–452 as amended, Inspector General Act of 1978; 32 CFR Part 98, Defense Hotline Program; and DoD Directive 5106.1, Inspector General of the Department of Defense.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''By Individual's name, subject matter, and Hotline case number''.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, DoD Hotline Division, Office of the Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name and address. Requests submitted on behalf of other persons must include their written authorization.''

RECORDS ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name and address. Requests submitted on behalf of other persons must include their written authorization.''

* * * * *

CIG–16

SYSTEM NAME:

DoD Hotline Program Case Files.

SYSTEM LOCATION:

DoD Hotline Division, Office of the Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

Individuals filing hotline complaints; individuals alleged to have been involved in criminal or administrative misconduct, including, but not limited to, fraud, waste, or mismanagement; or individuals identified as having been adversely affected by matters being investigated by the Office of the Inspector General.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records resulting from the referral of, and inquiry into, hotline complaints, such as the date of the complaint; the hotline control number; the name of the complainant; the actual allegations; referral documents to DoD components requesting investigation into DoD Hotline complaints; referral documents from DoD components transmitting the DoD Hotline Completion Report, which normally contains the name of the examining official(s) assigned to the case; background information regarding the investigation itself, such as the scope of the investigation, relevant facts discovered, information received from witnesses, and specific source documents reviewed; the investigator's findings, conclusions, and recommendations; and the disposition of the case; and internal DoD Hotline forms documenting review and analysis of DoD Hotline Completion Reports received from DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95–452 as amended, Inspector General Act of 1978; 32 CFR Part 98, Defense Hotline Program; and DoD Directive 5106.1, Inspector General of the Department of Defense.

PURPOSE(S):

To record information related to official hotline investigations.

To compile statistical information to disseminate to other components within the Department of Defense engaged in the Hotline Program.

To provide prompt, responsive, and accurate information regarding the status of ongoing cases.

To provide a record of complaint disposition. Hotline complaints appearing to involve criminal wrongdoing will be referred to the Defense Criminal Investigative Service or other criminal investigative units of DoD components.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By Individual's name, subject matter, and Hotline case number.

SAFEGUARDS:

Access is limited to DoD Hotline staff. Paper and automated records are stored in rooms protected by cipher lock. The automated system is password protected, and regular back-ups of data are performed.

RETENTION AND DISPOSAL:

Hotline case files not referred are destroyed after 2 years.

Electronic copies created on electronic mail and word processing systems are deleted after a record keeping copy has been produced.

Automated and paper records are retained within the Office of the Defense Hotline Division for a period of 5 years after closure. The records are then retired to the Washington National Records Center for an additional 5 years, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DoD Hotline Division, Office of the Assistant Inspector General for Communications and Congressional Liaison, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name and address. Requests submitted on behalf of other persons must include their written authorization.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Freedom of Information Act Requester Service Center/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the individual's full name and address. Requests submitted on behalf of other persons must include their written authorization.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Sources, subjects, witnesses, all levels of Government, private businesses, and nonprofit organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 312. For additional information contact the system manager.

[FR Doc. E8–24436 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Dendrimer Based Detection Technology for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel dendrimer technology as described in United States Patent #6,716,450 entitled ''*Enhancing Protein Activity Through Nanoencapsulation*'', Yin, *et al.*, issued April 6, 2004. Licenses shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRD–ARL–DP–P/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–24512 Filed 10–14–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant an Exclusive License to ANP Technologies, Inc.

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In compliance with 37 CFR 404 *et seq.*, the Department of the Army hereby gives notice of its intent to grant to ANP Technologies, Inc., 824 Interchange Boulevard, Newark, DE 19711, an exclusive license relative to United States Patent #6,716,450 entitled ''*Enhancing Protein Activity Through Nanoencapsulation*'', Yin, *et al.*, issued April 6, 2004. Anyone wishing to object to the granting of this license has 15 days from the date of this notice to file written objections along with supporting evidence, if any.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRD–ARL–DP–P/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–24510 Filed 10–14–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Intraoral Measurement of Saliva Osmolarity to Measure Hydration Status

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/096,941 entitled ''Intraoral Measurement of Saliva Osmolarity to Measure Hydration Status,'' filed September 15, 2008. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention comprises a rapid, non-invasive method that uses saliva to determine and/or monitor a subject's hydration level for diagnostic, treatment, and prophylactic purposes. By determining/monitoring the hydration status of a subject, preventive measures may be applied to prevent heat injuries and deaths.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–24497 Filed 10–14–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Provisional Patent Application Concerning Method and Kit for Detecting Adenovirus Serotype 14 Virus

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of the invention set forth in U.S. Provisional Patent Application Serial No. 61/058,598 entitled ''Method and Kit for Detecting Adenovirus Serotype 14 Virus,'' filed June 4, 2008. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Adenovirus type 14 (Ad14) is an emerging pathogen that can cause life threatening diseases and large outbreaks. To improve the capability of the laboratory for diagnosing AD14 infection and to prepare for possible outbreak, a real-time PCR assay targeting a unique sequence in the hexon region of the adenovirus genome is disclosed.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. E8–24488 Filed 10–14–08; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0074]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 14, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0614–115 DAMI

SYSTEM NAME:

Department of the Army Operational Support Activities (October 4, 1995, 60 FR 51996).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Investigative Records Repository, U.S. Army Intelligence and Security Command, 902d Military Intelligence Group, ATTN: IAMG–CIC–IRR, Fort Meade, MD 20755–5995.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and on electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Buildings employ alarms, security guards and or rooms are security controlled areas accessible only to authorized persons. Paper records are maintained in General Service Administration approved security containers. Electronic records are maintained in specialized software with password protected access and data backup measures. Records are accessible only to authorized persons who are properly screened, cleared, and trained.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''From the individual and investigative reports of Defense Security Service, U.S. Army Intelligence and Security Command, and other Federal and Department of Defense investigative and law enforcement agencies.''

* * * * *

A0614–115 DAMI

SYSTEM NAME:

Department of the Army Operational Support Activities.

SYSTEM LOCATION:

Investigative Records Repository, U.S. Army Intelligence and Security Command, 902d Military Intelligence Group, ATTN: IAMG–CIC–IRR, Fort Meade, MD 20755–5995.

U.S. Army Field Support Center, U.S. Army Intelligence and Security Command, Fort George G. Meade, MD 20755–5905.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected members of the U.S. Army who participate in and have received support for conducting U.S. Army intelligence and counterintelligence duties. Included are personnel of other Federal agencies who request and receive support from appropriate authority.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel files containing information such as autobiographies, financial statements, psychological test results, photographs of the applicants and spouse, and probationary/tenure reports with electronic index of individuals who have received support from DA in completing specialized duties within the Army's intelligence and counterintelligence activities. Files and duplicate electronic files of individuals indicating any identity and other data which may be used to identify them in their support of the DA's intelligence and counterintelligence activities.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; National Security Act of 1947, as amended; E.O. 10450, Security Requirements for Government Employees, sections 2, 3, 4, 5, 6, 7, 8, 9, and 14; E.O. 12333, United States Intelligence Activities, paragraphs 1.1(c), 1.1(d), 1.12(d), 2.3, 2.4, and 2.6; and E.O. 9397 (SSN).

PURPOSE(S):

To identify and manage the careers of individuals performing duties in the Department of the Army specialized intelligence and counterintelligence assignments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as routine uses pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By name, date and place of birth, and Social Security Number.

SAFEGUARDS:

Buildings employ alarms, security guards and or rooms are security controlled areas accessible only to authorized persons. Paper records are maintained in General Service Administration approved security containers. Electronic records are maintained in specialized software with password protected access and data backup measures. Records are accessible only to authorized persons who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are retained in active file until release, separation, transfer, retirement or resignation by individual; retained in inactive file for 5 years; and retired to the IRR where file is destroyed 15 years after date of last action by shredding, burning or pulping, and magnetic erasing for electronic records.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Intelligence, Headquarters, Department of the Army, 1001 Army Pentagon, Washington, DC 20310–1001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/ Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/ Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and investigative reports of Defense Security Service, U.S. Army Intelligence and Security Command, and other Federal and Department of Defense investigative and law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. E8–24432 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0075]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 14, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0025–2 SAIS DoD

SYSTEM NAME:

Department of Defense Biometric Information Systems and Army Information Assurance for Automated Information Systems (AIS) (October 1, 2008, 73 FR 57079).

CHANGES:

SYSTEM NAME:

Delete entry and replace with ''Defense Biometric Services''.

A0025–2 SAIS DoD

SYSTEM NAME:

Defense Biometric Services.

SYSTEM LOCATION:

Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include, but are not limited to, members of the U.S. Armed Forces, DoD civilian and contractor personnel, military reserve personnel, Army and Air National Guard personnel, and other individuals (who are U.S. citizens or aliens lawfully

admitted for permanent residence) requiring or requesting access to DoD or DoD controlled information systems and/or DoD or DoD contractor operated or controlled installations and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; similar relevant information; biometrics templates, biometric images, supporting documents, and biographic information including, but not limited to, name, date of birth, place of birth, height, weight, eye color, hair color, race and gender, and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; and E.O. 9397 (SSN).

PURPOSE(S):

To control logical and physical access to Department of Defense (DoD) and DoD controlled information systems and DoD or DoD contractor operated or controlled installations and facilities and to support the DoD physical and logical security, force protection, identity management, personnel recovery, and information assurance programs, by identifying an individual or verifying/authenticating the identity of an individual through the use of biometrics (i.e., measurable physiological or behavioral characteristics) for purposes of protecting U.S./Coalition/allied government and/or U.S./Coalition/allied national security areas of responsibility and information.

Information assurance purposes include the administration of passwords and identification numbers for operators/users of data in automated media; identifying data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and determining the propriety of individual access into the physical data residing in automated media.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, State, tribal, local, or foreign agencies, for the purposes of law enforcement, counterterrorism, immigration management and control, and homeland security as authorized by U.S. Law or Executive Order, or for the purpose of protecting the territory, people, and interests of the United States of America against breaches of security related to DoD controlled information or facilities, and against terrorist activities.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number, subject, application program key, and biometric template, and other biometric data.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties and who are properly screened and cleared for need-to-know.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947, (304) 326–3004.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Director, Biometrics Operations Directorate, Biometrics Task Force, 347 West Main Street, Clarksburg, West Virginia 26306–2947.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, DoD security offices, system managers, computer facility managers, automated interfaces for user codes on file at Department of Defense sites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–24440 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0073]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 14, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0381–100b DAMI

SYSTEM NAME:

Technical Surveillance Index (February 2, 1996, 61 FR 3920).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''The intelligence portions of the index are located at the Investigative Records Repository, U.S. Army Intelligence and Security Command, 902d Military Intelligence Group, ATTN: IAMG–CIC–IRR, Fort Meade, MD 20755–5995; and

The law enforcement portions of the index are located at the Director, U.S. Army Crime Records Center, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and on electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By a combination of name, address, Social Security Number, telephone number, radio frequency, call sign, or case designation.''

SAFEGUARDS:

Delete entry and replace with ''Access to buildings is controlled by security guards. The electronic index is maintained in specialized software with password protected access and data backup measures. Paper records are maintained in General Services Administration approved security containers, physically separated from other materials, and are accessible only to authorized personnel who are properly screened, cleared, and trained.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.''

* * * * *

A0381–100b DAMI

SYSTEM NAME:

Technical Surveillance Index.

SYSTEM LOCATION:

The intelligence portions of the index are located at the Investigative Records Repository, U.S. Army Intelligence and Security Command, 902d Military Intelligence Group, ATTN: IAMG–CIC–IRR, Fort Meade, MD 20755–5995; and

The law enforcement portions of the index are located at the Director, U.S. Army Crime Records Center, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons under investigation by military law enforcement or military intelligence activities and parties to the conversation, whose conversations have been intercepted during electronic surveillance operations conducted by, or on behalf of, the Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

The person who is the subject of the surveillance and to the extent known, names of each identifiable person whose communications were intercepted; language of conversation; Social Security Numbers; telephone number, radio frequencies or radio call signs involved; address of premise at which surveillance was conducted; title or number of the investigative file; element maintaining the case file and date or dates of the interceptions.

Also may include backup material (i.e., electronic surveillance information that was used, retained, or disseminated) when not filed as part of the investigative file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

18 U.S.C. 2510–2520 and 3504; DoD 5240.1–R as implemented by Army Regulation 381–10, U.S. Army Intelligence Activities; and DoD 5200.24 as implemented by Army Regulation 190–53, Interception of Wire and Oral Communications for Law Enforcement Purposes; and E.O. 9397 (SSN).

PURPOSE(S):

To enable Military Law Enforcement and Counterintelligence agencies to quickly locate records of electronic surveillance activities in response to motions for discovery and inquiries and court documents.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By a combination of name, address, Social Security Number, telephone number, radio frequency, call sign, or case designation.

SAFEGUARDS:

Access to buildings is controlled by security guards. The electronic index is maintained in specialized software with password protected access and data backup measures. Paper records are maintained in General Services Administration approved security containers, physically separated from other materials, and are accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Investigative Records Repository electronic index entries are deleted 10 years after date of interception or upon destruction (shredding, burning, pulping or magnetic erasing) or transfer to the National Archives of case file containing electronic surveillance information. Transfer dates occur 25, 30, and 50 years after the date of the most current material in the file as governed by retention period applied to the case dossier. Crime Records Center documents and related interception will be maintained for the period of time consistent to the investigative record to which they pertain, i.e., 3, 5, and 40 years. Disposal will be through shredding, burning or pulping and magnetic erasing.

Tapes obtained as the result of domestic non-consensual interceptions and retained as backup material will be kept for 10 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Deputy Chief of Staff for Intelligence, Headquarters, Department of the Army, 1001 Army Pentagon, Washington, DC 20310–1001 for the intelligence portion of the index.

The U.S. Army Criminal Investigations Command, 5611 Columbia Pike, Falls Church, VA 22041–2015 for the law enforcement portion of the index.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/ Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/ Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish his/her full name, any alias, Social Security Number, date and place of birth, current address, telephone number, and a notarized signature or contact 1–866–548–5651 or e-mail the INSCOM FOIA office at *INSCOM_FOIA_ServiceCenter@mi.army.mil*.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Army and other Federal, state and local investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. E8–24441 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0072]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is proposing to amend a system of records in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on November 14, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

DHA 03

SYSTEM NAME:

Pentagon Employee Referral Service (PERS) Counseling Records (February 22, 1993, 58 FR 10227).

CHANGES:

Change system ID to ''A0040–66c DASG''.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Room 224, 5803 Army Pentagon, Washington, DC 20310–5803.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. Part 792, Federal Employees' Health and Counseling Programs; E.O. 12564, 1986 Drug-Free Workplace; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; and E.O. 9397 (SSN).''

* * * * *

ADD TWO NOTES UNDER ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States,

shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in filing cabinets and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Patient's last name, Social Security Number (SSN) and Client Case Number.''

SAFEGUARDS:

Delete entry and replace with ''Paper records are maintained in file cabinets that are locked when the office is not occupied by authorized personnel. The automated database files are on a password-protected, stand alone computer. All patient records are maintained and used with the highest regard for patient privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper records are destroyed five years after termination of counseling. Destruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data seven years after termination of counseling.

Aggregate data without personal identifiers is maintained for management/statistical purposes until no longer required.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE HEALTH Clinic, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the signature of the subject individual.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the notarized signature of the subject individual.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.''

* * * * *

A0040–66c DASG

SYSTEM NAME:

Pentagon Employee Referral Service (PERS) Counseling Records.

SYSTEM LOCATION:

Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Room 224, 5803 Army Pentagon, Washington, DC 20310–5803

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

All civilian DoD employees assigned to duty in the Pentagon and environ who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on patients which are generated in the course of professional counseling. Records of information on condition, current status, progress and prognosis for patients who have personal, emotional, alcohol or drug dependency problems, including admitted or urinalysis-detected illegal drug abuse.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. Part 792, Federal Employees' Health and Counseling Programs; E.O. 12564, 1986 Drug-Free Workplace; Army Regulation 40–66, Medical Record Administration and Health Care Documentation; and E.O. 9397 (SSN).

PURPOSE(S):

To record counselor's observations concerning patient's condition, current status, progress prognosis and other relevant treatment information regarding patients in an employee assistance treatment facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records in this system may not be disclosed without the prior written consent of such patient, unless the disclosure would be:

To medical personnel to the extent necessary to meet a bona fide medical emergency;

To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefore.

Note: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant

to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in filing cabinets and electronic storage media.

RETRIEVABILITY:

Patient's last name, Social Security Number (SSN) and Client Case Number.

SAFEGUARDS:

Paper records are maintained in file cabinets that are locked when the office is not occupied by authorized personnel. The automated database files are on a password-protected, stand alone computer. All patient records are maintained and used with the highest regard for patient privacy. Only persons on a need-to-know basis and trained in the handling of information protected by the Privacy Act have access to the system.

RETENTION AND DISPOSAL:

Paper records are destroyed five years after termination of counseling. Destruction is by shredding, pulping, macerating, or burning.

Electronic records are purged of identifying data seven years after termination of counseling.

Aggregate data without personal identifiers is maintained for management/statistical purposes until no longer required.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE HEALTH Clinic, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the signature of the subject individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Pentagon Employee Referral Service, DiLorenzo TRICARE Health Clinic, Rm. 230, 5803 Army Pentagon, Washington, DC 20310–5803.

The request should contain the full name, address, Social Security Number (SSN) and the notarized signature of the subject individual.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Patient, counselors, supervisors, co-workers or other agency or contractor-employee personnel; private individuals to include family members of patient and outside practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–24473 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2008–0055]

Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to Delete Nine Systems of Records Notices.

SUMMARY: The U.S. Marine Corps is deleting nine systems of records notices from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: This action will be effective without further notice on November 14, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete nine systems of records notices from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: October 7, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

Deletions

MIL00005

SYSTEM NAME:

Passenger Transportation Program (February 22, 1993, 58 FR 10630).

REASON:

These records are maintained by the U.S. Transportation Command. Accordingly, all files have been merged into that system.

MIL00006

SYSTEM NAME:

Dealer's Record of Sale of Rifle or Pistol, State of California (February 22, 1993, 58 FR 10630).

REASON:

NM08730–1, Weapons Registration, is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into that system.

MMC00003

SYSTEM NAME:

Activity Check In Check Out File (October 22, 1999, 64 FR 57071)

REASON:

NM05000–2, Organization Management and Locator System, is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into that system.

MJA00013

SYSTEM NAME:

Bad Checks Withdrawal of Check Cashing Privileges Lists (October 22, 1999, 64 FR 57071).

REASON:

Collections are no longer being done, therefore, no need for the notice.

MJA00001

SYSTEM NAME:

Business Complaint File (February 22, 1993, 58 FR 10630).

REASON:

This system collects no personal information, it collects business information only. Therefore, no need for the notice.

MIL00003

SYSTEM NAME:

Laundry Charge Accounts Records (February 22, 1993, 58 FR 10630).

REASON:

Collections are no longer being done, therefore, no need for the notice.

MIL00011

SYSTEM NAME:

Marine Corps Exchange Vendor Directory (February 22, 1993, 58 FR 10630).

This system collects no personal information, it collects business information only. Therefore, no need for the notice.

MIN0001

SYSTEM NAME:

Personnel Security Eligibility and Access Information System (February 22, 1993, 58 FR 10630).

REASON:

NM05000–2, Organization Management and Locator System, is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into that system.

MIL00021

SYSTEM NAME:

Working Files, Division Supply Sections and Wing Sections (August 17, 1999, 64 FR 44698).

REASON:

NM05000–2, Organization Management and Locator System, is a joint Navy and Marine Corps system that covers this collection. Accordingly, all files have been merged into that system.

[FR Doc. E8–24393 Filed 10–14–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 14, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''Comment: [insert OMB number], [insert abbreviated collection name, *e.g.*, ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 8, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title: Beginning Longitudinal Study BPS 04/09.

Frequency: The BPS follow-up study is conducted in conjunction with NPSAS. About every 8 years a new cohort is established.

Affected Public: Businesses or other for-profit, Not-for-profit institutions, State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 14,916.

Burden Hours: 12,829.

Abstract: This OMB package is for the full-scale BPS 2004/2009 study. BPS previously received OMB approval for a field test earlier this year. This package requests clearance for the full-scale study. The BPS 04/09 will be the second follow-up interview for students who first participated in the Beginning Postsecondary Study in 2004 and were later interviewed in 2006. The BPS studies students who first entered postsecondary education in 2004 and follows them throughout the postsecondary education experience, tracking their enrollment, persistence, progress, attainment in undergraduate education, as well as their post-graduate entry into the labor force or continued education in graduate and professional schools.

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 3859. 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. E8–24427 Filed 10–14–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The

Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 6, 2008, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Liaisons' Comments
  - Ohio Environmental Protection Agency Comments
  - Suggestions for Possible Liaisons
- Presentations
- Public Comments
- Administrative Issues—Actions:
  - Operating Procedures
  - Approve Work Plan
- Public Comments
- Final Comments
- Adjourn

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above.

Issued at Washington, DC on October 8, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–24397 Filed 10–14–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these teleconferences be announced in the **Federal Register**.

DATES: October 16, 2008 at 1 p.m. EDT

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Acting Assistant Manager, Office of Commercialization and & Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303/275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Update members on routine business matters.

Public Participation: The teleconference is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the conference call; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the call in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Notes: The notes of the teleconference will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org*.

Issued at Washington, DC, on October 8, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–24387 Filed 10–14–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

State Energy Advisory Board (STEAB)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: November 18–20, 2008.

Location: L'Enfant Plaza Hotel 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Gary Burch, STEAB Designated Federal Officer, Office of Commercialization and Project Management, Golden Field Office, U.S. Department of Energy, 1617 Cole Boulevard, Golden, CO 80401, Telephone 303–275–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Discuss ways STEAB can continue to support DOE's commercialization efforts, consider potential collaborative activities involving the State Energy Offices and the land grant institutions of the USA and their cooperative energy extension services, and update members on routine business matters.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gary Burch at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the

meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, *http://www.steab.org*.

Issued at Washington, DC, on October 8, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–24396 Filed 10–14–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Solicitation of Comments on the Process and Technologies Used for Disseminating the Weekly Petroleum Status Report and the Weekly Natural Gas Storage Report

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Solicitation of comments on the process and technologies used for disseminating the *Weekly Petroleum Status Report* and the *Weekly Natural Gas Storage Report*.

SUMMARY: The EIA is requesting comments on the process and technologies used for disseminating weekly information regarding petroleum and natural gas stocks in the *Weekly Petroleum Status Report (WPSR)* and the *Weekly Natural Gas Storage Report (WNGSR).* EIA has attempted to develop its current dissemination processes and information technologies to meet its goal of providing fair access to any interested user, but has recently faced significant challenges in this area that may require changes in the process and/or technologies used for disseminating weekly data. This request is based on EIA's mandate for carrying out a central, comprehensive and unified energy data and information program responsive to users' needs for credible, reliable and timely energy information that will improve and broaden understanding of petroleum and natural gas supply in the United States.

DATES: Comments must be filed by November 14, 2008. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Comments should be directed to Karen Robinson, Office of Oil and Gas. To ensure receipt of the comments by the due date, submission by FAX (202–586–9739) or e-mail (*karen.robinson@eia.doe.gov*) is recommended. The mailing address is Office of Oil and Gas, Energy Information Administration, EI–40, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Alternatively, Karen Robinson may be contacted by telephone at (202) 586–2585.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Karen Robinson as listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Issues with Dissemination of Weekly Reports
III. Request for Comments

I. Background

Every week, the EIA's Office of Oil and Gas releases two reports, one on the previous week's U.S. petroleum supply and disposition and one on natural gas storage inventories. Together, these reports provide the industry, press, planners, policymakers, consumers, analysts, and State and local governments with a ready, reliable source of current information about petroleum and natural gas.

The *WPSR* has provided timely information on supply and disposition of crude oil and principal petroleum products since April 1979. The *WPSR* was initiated to increase available information during a period of gasoline shortages arising from the repercussions of the revolution in Iran. The *WPSR* describes the supply and disposition of crude oil and petroleum products in the United States in major U.S. regions called Petroleum Administration for Defense Districts. The weekly data are used as preliminary estimates for the *Petroleum Supply Monthly (PSM)* and the *Monthly Energy Review (MER).* While more accurate and detailed data are presented in the *PSM* based on monthly surveys, those surveys do not capture sudden or rapid changes in petroleum market conditions nor do they provide data that are timely enough to be useful in a shortfall situation.

The *WNGSR* has provided weekly estimates of working natural gas volumes held in underground storage facilities at the national and regional levels since May 2002. Weekly estimates of working natural gas in storage were first provided by the American Gas Association (AGA) starting in 1994. EIA picked up the report when the AGA announced that it would discontinue its survey. The *WNGSR* relies on weekly survey data from a sample of operators of underground storage facilities. These data are used to prepare regional and national estimates for all underground storage. In September 2007 the *WNGSR* was designated by the Office of Management and Budget as DOE's first Principal Federal Economic Indicator.

Over time, interest in both the *WPSR* and the *WNGSR* has increased. Weekly *WPSR* and *WNGSR* results are routinely predicted by analysts, and deviations from analysts' expectations are often cited as moving futures markets in petroleum and natural gas.

As one part of its response to a problem that arose in the release of *WPSR* data on May 29, 2008, press releases issued on May 29, 2008 and June 2, 2008, announced EIA's intention to open a dialogue to discuss the technical and process challenges facing EIA in this area with users interested in accessing weekly data, including the press, trading organizations and other parties. This **Federal Register** notice initiates that dialogue. Following the exchange of information with stakeholders, EIA will develop a specific proposal for a comprehensive release process that is both fair and takes account of changing technologies and post that proposal in the **Federal Register** for comment. After considering comments, EIA will decide on and publicly announce its revised comprehensive release process before any changes are implemented.

II. Issues With Dissemination of Weekly Reports

EIA's interest is in providing fair access to any interested user, regardless of the nature of their interest, whether that interest is commercial, journalistic, academic, policy or general interest. EIA's dissemination process and information technologies attempt to meet that goal.

EIA's current practice is to load the *WPSR* and *WNGSR* on its Web site prior to the scheduled release time, behind a software ''gate'' that prevents access to the reports before the release time. At the release time, the gate is removed, and interested parties have access to the information.

Because oil and natural gas market participants respond extremely quickly to the information, the commercial value of the information is high but decays extremely quickly. The use of automated retrieval programs known as ''robots'' to access online data in combination with the ability to program trading based on data received by robots through electronic interfaces in oil and natural gas commodities markets (both futures and over-the-counter swaps) creates a situation where small time

differences in access to this information can have commercial implications.

Consistent with the intense immediate interest and the quick decay in the commercial value of the information, demand on EIA servers increases significantly over just a few seconds around release times. For example, during the first half of 2008, attempts to access the Web site for the *WPSR* at about the time of release rose from fewer than 100 hits per second to a typical peak between 1,000 and 5,000 hits per second. One hour before or after the release, hits per second are at much lower levels. The immediate reason for the surge in hits on the EIA web site is the more active use of robots. In EIA's experience, although most robots have not performed at excessive levels, some robots have been designed to submit requests so rapidly that their load has reduced overall server performance and impaired access to others.

EIA has attempted to manage this weekly demand for *WPSR* data and, to a lesser degree, the *WNGSR,* through the application of a new process and technologies designed to meet the goal of providing fair access to any interested user. However, in a Web environment, strategies used by EIA's customers evolve constantly, requiring continuous refinement of EIA's process and information technologies to meet its goal of providing all EIA customers with fair access to our data. Two recent experiences illustrate the challenges faced by EIA in this area.

On May 29, 2008, petroleum data published in the *WPSR* for the week ending May 23, 2008, was briefly made available on the public EIA Web site prior to its scheduled release time of 10:30 a.m. (Eastern Time) due to a combination of procedural and information technology errors involving the process and technologies deployed in response to the rise in robot activity. EIA reviewed what happened on May 29, 2008, and took significant actions to stabilize its systems and strengthen its processes. In a press release on the day of the incident, EIA provided information on initial indications of the problem and stated that interim changes necessary to avoid a recurrence would be made available no later than June 2, 2008, two days ahead of the next scheduled weekly data release. The May 29, 2008, press release and another one issued on June 2, 2008, announced EIA's intention to open a dialogue with customers on the process and technologies for dissemination of the weekly data. The June 2, 2008, press release also outlined the following interim changes:

1. Temporary process changes, including a delay in *WNGSR* and *WPSR* data releases until 10:35 a.m., to assure the inaccessibility of data;

2. Release of *WNGSR* and *WPSR* 30 minutes apart when releases are scheduled to occur on the same day during weeks with a Federal holiday on a Monday;

3. Immediate implementation of a policy to block robots that are accessing the Web site in any way that EIA considers excessive or malicious or that do not contain contact or identifying information; and,

4. A reminder that EIA may report robot activity in accordance with its Security Policy, which could result in criminal prosecution under the Computer Fraud and Abuse Act of 1986 and the National Information Infrastructure Protection Act of 1996 (Pub. L. 104–294), (18 U.S.C. 1030), or other applicable criminal laws.

Internally, EIA thoroughly tested its software, both in regular operations and under stressed conditions, and eliminated all identified problems. EIA also has revised its process, increasing the communication across EIA staff before and during release to identify potential issues, proactively develop actions to minimize risk and assure that all employees act in accordance with written procedures.

EIA's actions have materially reduced the likelihood of a repeated early release of the *WPSR,* but stress on the process and systems remains due to the increasing level of interest in the *WPSR* and *WNGSR* at release time. EIA's interim actions were primarily designed to stabilize and improve its process and system. In addition, the actions did remind those accessing *WPSR* and *WNGSR* data that EIA policy permitted more active EIA responses to manage certain types of behaviors.

The most aggressive activity did subside for some time after the May 29, 2008, incident and the issuance of the May 29, 2008, and June 2, 2008, press releases. More recently, however, the most aggressive visitors have increased their activity significantly. For example, on September 10, 2008, some parties attempting to reach the *WPSR* faced delays in access until after the release time directly because of the aggressive behavior of others. On that day, robots launched from several IP addresses impeded access to EIA's servers for several seconds by repeatedly downloading the same *WPSR* data—hundreds or thousands of times—without relinquishing their connections. This activity impaired other users' access to the data.

EIA is continuing to explore technological alternatives to permit it to achieve its goal of providing fair access to *WPSR* and *WNGSR* data as close to simultaneously as possible to any interested user, regardless of the nature of their interest, whether it is commercial, journalistic, academic, policy or general interest. Since September 10, 2008, EIA has more actively blocked robots from IP addresses with prior patterns of excessive attempts to download information. EIA is developing the ability to block real-time activity beyond predetermined thresholds. And, as indicated above, EIA has asserted its intent to report robot activity in accordance with its Security Policy, which could result in criminal prosecution under the Computer Fraud and Abuse Act of 1986 and the National Information Infrastructure Protection Act of 1996 (Pub. L. 104–294), (18 U.S.C. 1030), or other applicable criminal laws.

The technical requirements to manage increasingly aggressive behavior by apparently increasing numbers of interested parties in a highly technological environment are extraordinary. The complexity is increased at the same time by EIA's and DOE's needs to manage cyber security in a Governmental context of tight budgets and very fast change. In some ways, the problem may be without precedent—the functional equivalent, whether intended or not, of a prescheduled denial-of-service attack twice a week. Incremental technology and process solutions may not be enough to assure that fair access to *WPSR* and *WNGSR* data is available to all interested users.

III. Request for Comments

EIA is asking for public comment on the issues discussed in item II. In particular, EIA is seeking public comments on the following questions:

A. EIA's interest is in providing fair access to any interested user, regardless of the nature of their interest, whether that interest is commercial, journalistic, academic, policy or general interest. EIA has attempted to develop its dissemination process and information technologies to meet that goal.

1. EIA releases information it collects in the normal course of its business. Release of that information is for the public good, rather than for any particular commercial reason. The commercial value of the information to users underscores its importance, but is entirely outside of EIA's mandate. Other than protecting its own information technology infrastructure, should EIA be concerned over the accessibility of the

information it disseminates on its Web site if some users experience delays in accessing the weekly data?

2. Disseminating information simultaneously over the web is not physically possible. Servers process information sequentially and communication connections to servers have physical limitations that mean, in absolute terms, the information does not move ''simultaneously.'' However, very small time differences may not be material. In the case of release of the *WPSR* and *WNGSR,* do minor delays involving one to fifty seconds in accessing information undermine EIA's policy to promote fair access in operational terms?

3. The value of *WPSR* and *WNGSR* information varies for different customers. With the development of electronic trading in oil and natural gas commodities—both futures and swaps—the ability to use software ''robots'' to access online data and the ability to automate trading based on data received by robots through electronic interfaces, a time difference in access to this information on the order of even a second or two could have implications for commercial users. Journalists and possibly certain consultants will want to communicate this information to commercial users as well, and very short-period access differences matter for these data users as well. Those with academic, policy or general interests may not need this information within seconds of its release. Should EIA consider possible technological solutions to provide access to this information on different time frames? Would treating different types of customers differently be a problem? If so, why and how?

4. A registration system could permit registered customers to have the most immediate access to data in exchange for contact information and an agreement to access information using procedures and methods that do not put other customers at risk for delayed access. Should EIA require registration for customers needing immediate access to this data and what guidelines would be reasonable for users to follow?

B. EIA's current practice is to load the *WPSR* and *WNGSR* on its Web site prior to the scheduled release time, behind a software ''gate'' that prevents access to the reports before the release time. At the release time, the gate is removed, and interested parties have access to the information. Currently, the releases occur at times when trading of energy futures on the New York Mercantile Exchange is open.

1. Is a web release of information the best way to disseminate that information? Are there alternatives that would be more effective? For example, are there reliable ''push'' technologies that could come closer to simultaneous access—ways for EIA to send the information to interested parties rather than simply posting it?

2. Are there particular technologies that EIA should be considering to (a) manage the brief, extraordinarily high loads associated with the *WPSR* and *WNGSR* releases, (b) block aggressive behaviors reducing service quality to others (inadvertently or intentionally), and (c) protect data after it is loaded onto the servers and before its release? Technologies could include software solutions, hardware and hardware configurations, etc.

3. Should EIA consider moving the release times for the *WPSR* and *WNGSR*? Most other economic and commodity data is released either before or after major U.S. stock and commodity exchanges are open. With the advent of electronic trading, NYMEX regularly trades petroleum and natural gas futures from 6 p.m. to the next day at 5:15 p.m. every day except Saturday afternoon into Sunday. This schedule typically leaves only a 45-minute window when trades do not take place during the work week. Online trading in over-the-counter swaps effectively takes place continuously. Are there times for release of the WPSR and WNGSR that better align with trading activity?

C. EIA has more actively blocked robots from IP addresses with prior patterns of extremely aggressive behavior. EIA is developing the ability to block activity by robots beyond pre-determined thresholds.

1. Should EIA consider banning use of robots to access this data?

2. Should EIA continue to block robots based on their level of activity? If so, what criteria should EIA use to block them? Historical behavior? Real-time behavior?

3. Could EIA develop and distribute a standard robot designed to regulate traffic by managing how hard it hit the EIA Web site, allowing for blocking of non-standard designs and possibly identifying users to allow for more effective follow-up?

D. EIA has asserted its intent to report robot activity in accordance with its Security Policy, which could result in criminal prosecution under the Computer Fraud and Abuse Act of 1986 and the National Information Infrastructure Protection Act of 1996 (Pub. L. 104–294), (18 U.S.C. 1030), or other applicable criminal laws. At what point does tying-up access to EIA's servers for several seconds by repeatedly downloading the same without relinquishing connections data—hundreds or thousands of times—become effectively a cyber security attack? What standards should EIA apply to make that determination?

Comments submitted in response to this notice will be considered by EIA in the development of future dissemination policies, processes and systems. The comments will also become a matter of public record.

After consideration of the comments, EIA will issue a description of revised policies, processes and technologies used for disseminating the *WPSR* and the *WNGSR*. The description will be announced in a **Federal Register** notice issued by EIA.

Statutory Authority: 15 U.S.C. 764(b) and 790(a).

Issued in Washington, DC, October 8, 2008.

Howard Gruenspecht,

Acting Administrator, Energy Information Administration.

[FR Doc. E8–24487 Filed 10–14–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–65A–000; FERC–65A]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

October 8, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due November 14, 2008.

ADDRESSES: Copies of sample filings of the proposed information collection can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the

Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC09–65A–000.

Documents filed electronically via the Internet must be prepared in an 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.* To file the document, access the Commission's Web site at *http://www.ferc.gov,* choose the Documents & Filings tab, click on eFiling, then follow the instructions given. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through the Commission'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, 888 First St., NE., Washington, DC 20426. He 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–65A ''Exemption Notification of Holding Company Status'' (OMB No. 1902–0216) is used by the Commission to implement the statutory provisions of the Public Utility Holding Company Act of 2005 (PUHCA 2005). Among other things, PUHCA 2005 was intended to give the Commission access to books and records relevant to costs incurred by a public utility or natural gas company which are necessary or appropriate for the protection of utility customers with respect to jurisdictional rates. The Commission has allowed for an exemption from this requirement if the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or if any class of transactions is not relevant to the jurisdictional rates of a public utility or natural gas company. Commission regulations in 18 CFR 366.3 describe the criteria in more specificity.

Commission regulations in 18 CFR 366.4 designate the use of FERC–65A for exemption requests. Filings may be made submitted in hardcopy or electronically through the Commission's Web site.

ACTION: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
10	1	1	10

The estimated total cost to respondents is $607.62. [10 hours divided by 2080 hours [1] per year, times $126,384 [2] equals $607.62]. The average cost per respondent is $60.76.

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, using 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 filing 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 cost estimate 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 information collection is necessary for the proper performance of the functions of the Commission; (2) the accuracy of the Commission's burden estimate of the proposed information collection, including the validity of the methodology and assumptions used to calculate the reporting burden; (3) ways to enhance the quality, utility and clarity of the information to be collected.

Kimberly Bose,

Secretary.

[FR Doc. E8–24492 Filed 10–14–08; 8:45 am]

BILLING CODE 6717–01–P

[1] Number of hours an employee works each year.

[2] Average annual salary per employee.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895–060]

City of Columbia, SC; Notice of Application for Amendment of License and Solociting Comments, Motions To Intervene, and Protests

October 8, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to construct facilities to increase water withdrawal for municipal use.

b. *Project No.:* 1895–060.

c. *Date Filed:* August 27, 2008.

d. *Applicant:* City of Columbia, South Carolina.

e. *Name of Project:* Columbia Hydroelectric.

f. *Location:* Broad River and Congaree Rivers, City of Columbia, Richland County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* William R. Argentieri, South Carolina Electric and Gas Company acting on behalf of the City of Columbia, SCE & G, 111 Research Drive, Columbia, South

Carolina 29203. Telephone (803) 217–9162.

i. *FERC Contact:* Derek Crane, *derek.crane@ferc.gov* (202) 502–8047.

j. *Deadline for filing comments, motions to intervene and protests:* November 10, 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.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* South Carolina Electric and Gas, on behalf of the City of Columbia (licensee), proposes to construct new intake facilities to withdraw a greater volume of water then is presently possible with the existing facilities. The licensee is approved to withdraw 120 million gallons per day (MGD), but only has the capability to withdraw 84 MGD with the current facilities. The licensee proposes to dismantle the current intake facilities and construct new facilities at this site.

l. *Location of the Application:* The filing 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://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/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 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 filing 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)(I)(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. E8–24495 Filed 10–14–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

October 8, 2008

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–3-000.

Applicants: Noble Clinton Windpark I, LLC, Noble Ellenburg Windpark, LLC, Noble Bliss Windpark, LLC, EFS Noble Holdings, LLC, Bankers Commercial Corporation.

Description: Nobel Clinton Windpark I, LLC's et al. Application for Approval of the Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act and Request for Expedited Consideration.

Filed Date: 10/07/2008.

Accession Number: 20081007–5082.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 28, 2008.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG09–3-000.

Applicants: Otay Mesa Energy Center, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/03/2008.

Accession Number: 20081003–5022.

Comment Date: 5 p.m. Eastern Time on Friday, October 24, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–1005–009; ER03–1079–009.

Applicants: Kansas City Power & Light Company; Aquila Inc.

Description: Kansas City Power & Light Company et al. submits substitute tariff sheets noting the KCPL and Aquila are Category 2 sellers in both Southwest Power Pool and Central regions under ER99–1005 *et al.*

Filed Date: 10/03/2008.

Accession Number: 20081007–0103.

Comment Date: 5 p.m. Eastern Time on Friday, October 24, 2008.

Docket Numbers: ER08–100–005; ER07–265–005; ER07–1215–006.

Applicants: Sempra Energy Trading LLC; Sempra Energy Solutions LLC; The Royal Bank of Scotland plc.

Description: Sempra Energy Trading, LLC et al. submits notice of change in status, in compliance with Order 652.

Filed Date: 10/06/2008.

Accession Number: 20081008–0131.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: ER08–387–006; ER06–200–016; ER07–254–009; ER03–1326–016; ER07–460–007; ER05–534–017; ER05–365–017; ER05–1262–017; ER06–1093–013; ER03–296–019; ER08–912–002; ER01–3121–018; ER05–332–017; ER07–287–010; ER08–933–003; ER07–195–009; ER08–934–004; ER07–242–010; ER03–951–019; ER04–94–017; ER02–2085–012; ER02–417–017; ER07–1378–008; ER05–1146–017; ER05–481–017; ER07–240–011; ER02–418–017; ER03–416–020.

Applicants: Atlantic Renewable Projects II, LLC; Big Horn Wind Project LLC; Casselman Windpower, LLC; Colorado Green Holdings LLC; Dillion Wind LLC; Eastern Desert Power LLC; Elk River Windfarm LLC; Flat Rock

Windpower LLC; Flat Rock Windpower II LLC; Flying Cloud Power Partners, LLC; Flying Cloud Power Partners, LLC; IBERDROLA RENEWABLES, Inc.; Klamath Energy LLC; Klondike Wind Power II LLC; Klondike Wind Power III LLC; Lempster Wind, LLC; Locust Ridge Wind Farm, LLC; Locust Ridge II, LLC; MinnDakota Wind LLC; Moraine Wind LLC; Mountain View Power Partners III, LLC; Northern Iowa Windpower II LLC; Phoenix Wind Power LLC; Providence Heights Wind, LLC; Shiloh I Wind Project LLC; Trimont Wind I LLC; Twin Buttes Wind LLC; Klamath Generation LLC; Klondike Wind Power LLC.

Description: Iberdrola Renewables Companies submits notification of a non-material change in status resulting from the construction of additional generating capacity by Klondike Wind Power II, LLC.

Filed Date: 10/06/2008.

Accession Number: 20081008–0130.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: ER08–1272–001.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits revisions to the Headroom cost allocation methodology contained in the NYISO's Open Access Transmission Tariff Attachment S.

Filed Date: 10/03/2008.

Accession Number: 20081006–0169.

Comment Date: 5 p.m. Eastern Time on Friday, October 24, 2008.

Docket Numbers: ER09–15–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits their proposed ''Revised Clean-Up Filing'' which is intended to replace the current existing Open Access Transmission & Energy Markets Tariff.

Filed Date: 10/01/2008.

Accession Number: 20081003–0100.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 22, 2008.

Docket Numbers: ER09–35–000.

Applicants: Tallgrass Transmission, LLC.

Description: Tallgrass Transmission, LLC submits request for acceptance of a formula rate and rate incentives for its investment in a major 765 kV transmission project that Tallgrass intends to build in the Southwest Power Pool, Inc.

Filed Date: 10/03/2008.

Accession Number: 20081007–0094.

Comment Date: 5 p.m. Eastern Time on Friday, October 24, 2008.

Docket Numbers: ER09–36–000.

Applicants: Prairie Wind Transmission, LLC.

Description: Prairie Wind Transmission, LLC requests acceptance of a formula rate and rate incentives for its investment in a major 765 kV transmission project that Prairie Wind intends to build in the Southwest Power Pool, Inc region.

Filed Date: 10/03/2008.

Accession Number: 20081007–0091.

Comment Date: 5 p.m. Eastern Time on Friday, October 24, 2008.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–22–002.

Applicants: Florida Power Corporation.

Description: Florida Power Corporation submits Order No. 890 OATT Attachment K Compliance Filing.

Filed Date: 10/07/2008.

Accession Number: 20081007–5094.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 28, 2008.

Docket Numbers: OA08–29–001.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits its Revised Order No. 890—Attachment K Compliance Filing.

Filed Date: 10/07/2008.

Accession Number: 20081007–5081.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 28, 2008.

Docket Numbers: OA09–2-000.

Applicants: Oklahoma Gas and Electric Company.

Description: Oklahoma Gas and Electric Company Order No. 890–B Compliance Filing.

Filed Date: 10/06/2008.

Accession Number: 20081006–5100.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Docket Numbers: OA09–4–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC's FPA Section 206 Filing with Non-Rate Terms and Conditions to comply with Order No. 890–B in OA09–4.

Filed Date: 10/06/2008.

Accession Number: 20081006–5122.

Comment Date: 5 p.m. Eastern Time on Monday, October 27, 2008.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH09–1–000.

Applicants: GAMCO Investors, Inc.

Description: GAMCO Investors, Inc submits its Form 65A notification of exemption from the Requirements of The Public Utility Holding Company Act of 2005.

Filed Date: 10/01/2008.

Accession Number: 20081007–0123.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 22, 2008.

Docket Numbers: PH09–2–000.

Applicants: MDU Resources Group, Inc.

Description: MDU Resources Group, Inc.—Exemption Notification and Notice of Material Change in Facts.

Filed Date: 10/07/2008.

Accession Number: 20081007–5030.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 28, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–24562 Filed 10–14–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

October 9, 2008.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 16, 2008, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Agenda.

*NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

939TH—MEETING

[Regular meeting, October 16, 2008, 10 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	ELECTRIC	
E–1	RM07–19–000, AD07–7–000	Wholesale Competition in Regions with Organized Electric Markets.
E–2	RM08–3–000	Mandatory Reliability Standard for Nuclear Plant Interface Coordination.
E–3	OA08–45–000, OA08–45–001	Portland General Electric Company.
E–4	OA08–52–000, OA08–52–001, OA08–52–002.	New York Independent System Operator, Inc.
E–5	RR08–6–000, RR07–14–001	North American Electric Reliability Corporation.
E–6	ER00–3251–015, ER00–3251–017	Exelon Generation Company, LLC.
	ER99–754–016, ER99–754–017	AmerGen Energy Company, LLC.
	ER98–1734–014, ER98–1734–016	Commonwealth Edison Company.
	ER01–1919–011, ER01–1919–013	Exelon Energy Company.
	ER01–1147–006, ER01–1147–007	PEPCO Energy Company.
	ER01–513–021, ER01–513–022	Exelon West Medway, LLC; Exelon Wyman, LLC; Exelon New Boston, LLC; Exelon Framingham, LLC.
	ER99–2404–011, ER99–2404–012	Exelon New England Power Marketing, L.P.
E–7	ER07–476–002	ISO New England, Inc. and New England Power Pool.
E–8	ER08–394–003	Midwest Independent Transmission System Operator, Inc.
E–9	ER08–556–000, ER06–615–020	California Independent System Operator Corporation.
E–10	ER08–1419–000	Southwest Power Pool, Inc.
E–11	OMITTED.	
E–12	OMITTED.	
E–13	OMITTED.	
E–14	RC07–4–003	Direct Energy Services, LLC.
	RC07–6–003	Sempra Energy Solutions, LLC.
	RC07–7–003	Strategic Energy, L.L.C.
E–15	EC08–78–000	Cinergy Corporation; Duke Energy Ohio, Inc.
	EL08–61–000	Cinergy Power Investments, Inc.; Generating Facility LLCs.
E–16	ER08–1178–000	California Independent System Operator Corporation.
E–17	ER05–849–002, ER05–849–003, ER05–849–006, ER05–849–007, ER05–849–008.	California Independent System Operator Corporation.
E–18	ER99–3151–008, ER99–3151–009	PSEG Energy Resources & Trade LLC.
	ER97–837–007, ER97–837–008	Public Service Electric and Gas Company.
	ER03–327–002, ER03–327–003	PSEG Power Connecticut LLC.
	ER08–447–000, ER08–447–001	PSEG Fossil LLC.
	ER08–448–000, ER08–448–001	PSEG Nuclear LLC.
E–19	ER08–1348–000, ER08–1348–001	Hardee Power Partners Limited.
E–20	ER01–1403–006, ER01–1403–007, ER01–1403–008.	FirstEnergy Operating Companies.
	ER06–1443–002, ER06–1443–003, ER06–1443–004.	Pennsylvania Power Company.
	ER04–366–005, ER04–366–006	Jersey Central Power & Light Company.

939TH—MEETING—Continued

[Regular meeting, October 16, 2008, 10 a.m.]

Item No.	Docket No.	Company
	ER01–2968–007, ER01–2968–008, ER01–2968–009.	FirstEnergy Solutions Corporation.
	ER01–845–006, ER01–845–007	FirstEnergy Generation Corporation.
	ER05–1122–004, ER05–1122–005	FirstEnergy Nuclear Generation Corporation.
	ER08–107–001, ER08–107–002	FirstEnergy Generation Mansfield Unit 1 Corporation.
E–21	ER08–637–003	Midwest Independent Transmission System Operator, Inc.; Transmission Owners of the Midwest Independent Transmission System Operator, Inc.
E–22	ER08–637–002	Midwest Independent Transmission System Operator, Inc.; Transmission Owners of the Midwest Independent Transmission System Operator, Inc.
E–23	ER00–1712–008, ER00–1712–009	PPL Electric Utilities Corporation.
	ER02–2408–003, ER02–2408–004	Lower Mount Bethel Energy LLC.
	ER00–744–006, ER00–744–007	PPL Brunner Island LLC; PPL Holtwood LLC; PPL Martins Creek LLC; PPL Montour LLC; PPL Susquehanna LLC.
	ER02–1327–005, ER02–1327–006	PPL University Park LLC.
	ER00–1703–003, ER00–1703–004	PPL EnergyPlus LLC.
	ER02–1749–003, ER02–1749–004	PPL Edgewood Energy LLC.
	ER02–1747–003, ER02–1747–004	PPL Shoreham Energy LLC.
	ER99–4503–005, ER99–4503–006	PPL Great Works LLC.
	ER00–2186–003, ER00–2186–004	PPL Maine LLC.
	ER01–1559–004, ER01–1559–005	PPL Wallingford Energy LLC.
E–24	OA08–71–000	Xcel Energy Services, Inc.
E–25	RM08–11–000	Version Two Facilities Design, Connections and Maintenance Reliability Standards.
E–26	EL08–74–000	Central Maine Power Company.
E–27	ER07–46–001, OA07–7–000, OA07–58–000, ER08–332–000.	NorthWestern Corporation.
E–28	ER08–412–002	Commonwealth Edison Company and Exelon Generation Company, LLC.
E–29	EL08–14–001	Black Oak Energy, L.L.C., EPIC Merchant Energy, L.P. and SESCO Enterprises, L.L.C. v. PJM Interconnection, L.L.C.
E–30	OMITTED.	
E–31	EL08–75–000	PacifiCorp.
E–32	OMITTED.	
E–33	ER01–468–006, ER01–468–007, ER01–468–008.	Dominion Energy Marketing, Inc.
	ER00–3621–007, ER00–3621–008, ER00–3621–009.	Dominion Nuclear Connecticut, Inc.
	ER00–3746–009	Dominion Nuclear Marketing III, L.L.C.
	ER04–318–002, ER04–318–003, ER04–318–004.	Dominion Energy Kewaunee, Inc.
	ER05–36–003, ER05–36–004, ER05–36–005.	Dominion Energy Brayton Point, LLC.
	ER05–37–003, ER05–37–004, ER05–37–005.	Dominion Energy Manchester Street, Inc.
	ER05–34–003, ER05–34–004, ER05–34–005.	Dominion Energy New England, Inc.
	ER05–35–003, ER05–35–004, ER05–35–005.	Dominion Energy Salem Harbor, LLC.
	ER04–249–003, ER04–249–004, ER04–249–005.	Dominion Retail, Inc.
	ER99–1695–008, ER99–1695–009, ER99–1695–010, ER01–2763–001.	Elwood Energy, LLC.
	ER02–23–009, ER02–23–010, ER02–23–011.	Fairless Energy, LLC.
	ER97–30–004, ER97–30–005, ER97–30–006, ER99–1432–009.	Kincaid Generation, LLC.
	ER96–2869–011, ER96–2869–012, ER96–2869–013, ER02–1342–003.	State Line Energy, LLC.
	ER97–3561–004, ER97–3561–005, ER98–3771–001, ER00–1737–009, ER00–1737–010, ER00–1737–011, ER00–2839–005, ER04–834–004.	Virginia Electric and Power Company.
	ER07–1306–003, ER07–1306–004	NedPower Mt. Storm, LLC.
E–34	ER08–394–001	Midwest Independent Transmission System Operator, Inc.
E–35	ER08–394–002	Midwest Independent Transmission System Operator, Inc.
E–36	NJ08–4–000	East Kentucky Power Cooperative, Inc.
	MISCELLANEOUS	
M–1	RM07–1–000	Standards of Conduct for Transmission Providers.
M–2	RM08–8–000	Ex Parte Contracts and Separation of Functions.
M–3	PL09–1–000	Compliance with Statutes, Regulations, and Orders.

939TH—MEETING—Continued

[Regular meeting, October 16, 2008, 10 a.m.]

Item No.	Docket No.	Company
	GAS	
G–1	RP07–655–001	Columbia Gas Transmission Corporation.
G–2	OMITTED.	
	HYDRO	
H–1	P–12666–001	Maine Tidal Energy Company.
H–2	P–12781–001, P–12781–002, P–12779–001, P–12779–002.	Pacific Gas & Electric Company.
H–3	P–2111–031, P–2071–036, P–935–082	PacifiCorp.
H–4	P–2213–024	Public Utility District No. 1 of Cowlitz County, Washington.
	CERTIFICATES	
C–1	CP08–437–000	City of Toccoa, Georgia.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E8–24556 Filed 10–14–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Post-2010 Resource Pool, Pick-Sloan Missouri Basin Program—Eastern Division

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures and call for applications.

SUMMARY: Western Area Power Administration (Western), Upper Great Plains Region, a Federal power marketing agency of the Department of Energy (DOE), is seeking comments on proposed procedures and is calling for applications from preference entities interested in an allocation of Federal power. The Energy Planning and Management Program (Program) provides for establishing project-specific resource pools and allocating power from these pools to new preference customers and other appropriate purposes as determined by Western. Western, in accordance with the Program, proposes procedures for comment and consideration, and also calls for applications from entities interested in a Federal power resource pool allocation. This resource pool is comprised of up to 1 percent (approximately 20 megawatts) of the long-term marketable resource of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) that may become available January 1, 2011 (Post-2010 Resource Pool). Preference entities that wish to apply for an allocation of power from Western's Upper Great Plains Region must submit formal applications as outlined below.

DATES: An entity interested in commenting on proposed procedures must submit written comments to Western's Upper Great Plains Regional Office at the address below. An entity applying for an allocation of power must submit a formal application to the Upper Great Plains Regional Office at the address below. Western must receive written and/or electronic comments and/or applications by 4 p.m., MST, on January 13, 2009. Western reserves the right to not consider any comments and/or applications received after the prescribed date and time.

Western will hold a public information forum and a public comment forum (immediately following the public information forum) on the proposed procedures and applications. The public information and public comment forums will be held on November 20, 2008, at 9 a.m. CST.

ADDRESSES: Submit applications for an allocation of Western power and/or written comments regarding these proposed procedures to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266. Applications for an allocation of Western power and comments on the proposed procedures may also be faxed to (406) 247–7408 or e-mailed with an electronic signature to *UGPPost2010@wapa.gov*. If submitting the application electronically and an electronic signature is not available, please either fax or mail the application signature page with the signature to the fax number/address provided above. Application forms are available upon request or may be accessed at *http://www.wapa.gov/ugp/post2010/APD.htm*. Applicants are encouraged to use the application form provided at the website.

The public information and comment forums will be held at the Holiday Inn, 100 West 8th Street, Sioux Falls, South Dakota.

FOR FURTHER INFORMATION CONTACT: John A. Pankratz, Public Utilities Specialist, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, telephone (406) 247–7392, or e-mail *pankratz@wapa.gov*.

SUPPLEMENTARY INFORMATION: On October 20, 1995, Western published the Final Rule for the Program (Final Rule) 60 FR 54151. The Final Rule became effective on November 20, 1995. Subpart C—Power Marketing Initiative of the Program, Final Rule, 10 CFR part 905, provides for project-specific resource pools and allocations of power from these pools to eligible new preference customers and/or for other appropriate purposes as determined by Western. The additional resource pool increments shall be established by pro rata withdrawals, on 2 years' notice, from existing customers. Specifically, 10 CFR 905.32(b) provides:

> At two 5-year intervals after the effective date of the extension to existing customers, Western shall create a project-specific resource pool increment of up to an additional 1 percent of the long-term marketable resource under contract at the time. The size of the additional resource pool increment shall be determined by Western based on consideration of the actual fair-share needs of eligible new customers and other appropriate purposes.

On June 25, 2007, Western published a Notice of Request for Letters of Interest in the **Federal Register** (72 FR 34680) in which Western requested and received letters of interest regarding a resource pool of up to 1 percent (approximately 20 megawatts) of the marketable resource that may become available January 1, 2011, for new customers and/or other appropriate purposes pursuant to the Program. Traditionally, Western has marketed allocations of firm power to be apportioned to eligible new preference entities in such a manner as to encourage the most widespread use thereof, in accordance with Federal Reclamation Law.

Availability of Information

Documents developed or retained by Western in developing this Post-2010 Resource Pool will be available for inspection and copying at the Upper Great Plains Regional Office in Billings, Montana. Public comments received on these proposed procedures will be available for viewing at *http://www.wapa.gov/ugp/Post2010/default.htm* after the close of the comment period.

Letters of Interest

As a result of the June 25, 2007, Notice of Request for Letters of Interest, Western received 32 responses, including 19 letters of interest and 13 comment letters. The responses were evaluated and categorized into three main areas. Some letters addressed more than one category. Eighteen entities expressed an interest in becoming a new customer. Three letters of interest were from entities seeking an allocation for other appropriate purposes, including supporting renewable energy programs and increasing a current customer allocation. Thirteen entities submitted comments advocating that Western apply the same policies and procedures that were applied to prior marketing initiatives, act within existing laws and regulations, not use other appropriate purposes to expand eligibility requirements, make allocations in such amounts as to be meaningful, and apply identical contract terms and conditions as were utilized for existing customers. One letter also commented that, under the Post-2010 Resource Pool, Western should not provide allocations to preference entities which previously held an allocation of Federal power and relinquished that allocation.

Response to Letters of Interest

Western has historically marketed power from resource pools to new preference customers through marketing plans and initiatives. Western recognizes the interest expressed from potential new customers in an allocation from the P–SMBP–ED. Western encourages the new customer interest that lends support to Western's mission of allocating low-cost hydropower in such a way as to promote the most widespread use thereof.

Western received 3 letters of interest regarding other appropriate purposes. One letter was received from a customer interested in an increase to its current allocation. Historically, Western has not increased allocations within the P–SMBP–ED that were established in marketing initiatives under the Program. Western recognizes that customer loads continue to grow and change and increases in individual allocations would be beneficial. However, if Western were to entertain requests for increases or adjustments to allocations, all customers would need to be afforded the opportunity to submit new applications. If this were to occur, it is expected that Western would receive significant modification requests, which would likely not be supportable with the power available from the Post-2010 Resource Pool. Any significant modifications could result in a new marketing plan, which is not the intent of the Program. Therefore, Western is not proposing to increase current customer allocations.

Western also received letters of interest supporting renewable resources as another appropriate purpose for the Post-2010 Resource Pool. Western believes the best manner to support renewable resources with this power is to allow existing customers to retain the power that may be available, after allocating to new customers. This will allow preference entities across the marketing area to leverage this power and use existing allocations to support renewable resources if they so choose. Western recognizes that many customers are already demonstrating support of renewable resources through their investments in various renewable projects across the P–SMBP–ED marketing area. Renewable projects are being developed and implemented by Western's customers regardless of any potential new allocation from the Post-2010 Resource Pool.

Western received comments stating that any commitment of the Post-2010 Resource Pool should be in amounts sufficient to be meaningful, subject to existing laws, regulations, and guidelines, as well as contract terms and conditions, set forth in previous marketing initiatives under the Program. Western agrees that any allocation made from the Post-2010 Resource Pool must comply with existing laws, regulations, and guidelines, as well as contract terms and conditions applied to allocations made in previous marketing initiatives under the Program.

Western also received a comment that allocations made under the Post-2010 Resource Pool should be limited to new preference entities that have not had a previous allocation of Federal power and relinquished it. The Program limits allocations to new preference entities, therefore Western agrees that preference entities that had a prior allocation of Federal power are not eligible to receive a new allocation in the Post-2010 Resource Pool.

Use of the Post-2010 Resource Pool

Based on examination of the letters of interest and comments, Western has determined the Post-2010 Resource Pool should be made available to new preference entities and is not proposing to use a share of the Post-2010 Resource Pool for other appropriate purposes. Allocations to new preference customers shall be made in accordance with the P–SMBP–ED Final Post-1985 Marketing Plan (45 FR 71860) (Post-1985 Marketing Plan) and the Program. Western intends to carry forward the key principles and criteria that were established in the Post-2000 and Post-2005 Resource Pools, except as modified herein.

The Proposed Post-2010 Resource Pool Allocation Procedures

These proposed procedures for the P–SMBP–ED address: (1) Eligibility

criteria, (2) how Western plans to allocate the Post-2010 Resource Pool in accordance with the Program to eligible applicants as new preference customers and not for other appropriate purposes, and (3) the terms and conditions under which Western will sell the power allocated.

I. Amount of Pool Resources

Western proposes to allocate up to 1 percent (approximately 20 megawatts) of the P–SMBP–ED long-term firm hydroelectric resource available, as firm power to eligible new preference customers. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western firm electric service contract.

II. General Eligibility Criteria

Western proposes to apply the following General Eligibility Criteria to applicants seeking an allocation of firm power under the proposed Post-2010 Resource Pool Allocation Procedures.

A. Qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. Qualified applicants must be located within the currently established P–SMBP—ED marketing area.

C. Qualified applicants must not be currently receiving benefits, directly or indirectly, from a current P–SMBP—ED firm power allocation or other firm Federal power commitment. Qualified Native American applicants who did not receive an allocation from the Post-2000 or Post-2005 Resource Pools are not subject to this requirement.

D. Qualified utility and non-utility applicants must be able to use the firm power directly or be able to sell it directly to retail customers.

E. Qualified utility applicants that desire to purchase power from Western for resale to consumers, including cooperatives, municipalities, public utility districts, and public power districts must have met utility status by January 1, 2008. Utility status means the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis.

F. Qualified Native American applicants must be an Indian tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western proposes to apply the following General Allocation Criteria to applicants seeking an allocation of firm power under the proposed Post-2010 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercise of its discretion under Federal Reclamation Law.

B. An allottee will have the right to purchase such firm power only upon executing an electric service contract between Western and the allottee, and satisfying all conditions in that contract.

C. Firm power allocated under these procedures will be available only to new preference customers in the existing P–SMBP—ED marketing area. The marketing area of the P–SMBP—ED is Montana (east of the Continental Divide), all of North Dakota and South Dakota, Nebraska east of the 101° meridian, Iowa west of the 94½° meridian, and Minnesota west of a line on the 94½° meridian from the southern boundary of the state to the 46° parallel and then northwesterly to the northern boundary of the state at the 96½° meridian.

D. Allocations made to Native American tribes will be based on the actual load experienced in calendar year 2007. Western has the right to use estimated load values for calendar year 2007 should actual load data not be available. Western will adjust inconsistent estimates during the allocation process.

E. Allocations made to qualified utility and non-utility applicants will be based on the actual loads experienced in calendar year 2007. Western will apply the Post-1985 Marketing Plan and the Program criteria to these loads. Western will carry forward key principles and criteria established in the Post-2000 and Post-2005 Resource Pools, except as modified herein.

F. Energy provided with firm power will be based upon the customer's monthly system load pattern.

G. Any electric service contract offered to a new customer shall be executed by the customer within 6 months of a contract offer by Western, unless otherwise agreed to in writing by Western.

H. The resource pool will be dissolved subsequent to the closing date of the last qualified applicant to execute their respective firm electric service contract. Firm power not under contract will be used in accordance with the Program.

I. The minimum allocation shall be 100 kilowatts (kW).

J. The maximum allocation for qualified utility and non-utility applicants shall be 5,000 kW.

K. Contract rates of delivery shall be subject to adjustment in the future as provided for in the Program.

L. If unanticipated obstacles to the delivery of hydropower benefits to Native American tribes arise, Western retains the right to provide the economic benefits of its resources directly to these tribes.

IV. General Contract Principles

Western proposes to apply the following General Contract Principles to all applicants receiving an allocation of firm power under these proposed Post-2010 Resource Pool Allocation Procedures.

A. Western shall reserve the right to reduce a customer's summer season contract rate of delivery by up to 5 percent for new project pumping requirements, by giving a minimum of 5 years' written notice in advance of such action.

B. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Any such adjustments shall only take place after a public process by Western.

C. Each allottee is ultimately responsible for obtaining its own third-party delivery arrangements, if necessary. Western may assist the allottee in obtaining third-party transmission arrangements for the delivery of firm power allocated under these procedures to new customers.

D. Contracts entered into under the Post-2010 Resource Pool Allocation Procedures shall provide for Western to furnish firm electric service effective from January 1, 2011, through December 31, 2020.

E. Contracts entered into as a result of these procedures shall incorporate Western's standard provisions for power sales contracts, integrated resource planning, and the General Power Contract Provisions.

V. Applications for Firm Power

This notice formally requests applications from qualified entities wishing to purchase power from the Upper Great Plains Region. Applicant Profile Data (APD) is requested so Western will have a uniform basis upon which to evaluate the applications. To be considered, applicants must submit an application to the Upper Great Plains Region. To ensure that full consideration is given to all applicants, Western will not consider applications submitted before publication of this notice or after the deadlines specified in the Dates Section. Applications are

available at *http://www.wapa.gov/ugp/Post2010/APD/default.htm*, or hard copies of the application are available upon request. Applicants are encouraged to use the application form provided at the above Web site.

A. Applicant Profile Data Application

The content and format of the APD are outlined below. Applicants must provide all requested information or the most reasonable available estimate. The applicant should note any requested information that is not applicable. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the entity/organization seeking the allocation of Federal power. The APD shall consist of the following:

1. Applicant Information:

a. Applicant's (entity/organization requesting an allocation) name and address.

b. Person(s) representing applicant: Contact person name, title, address, telephone and fax number, and email address.

c. Type of entity/organization: Federal agency, state agency, irrigation district, municipal, rural, or industrial user, municipality, Native American tribe, public utility district, rural electric cooperative, or other, please specify.

d. Parent entity/organization of applicant, if any.

e. Name of the applicant's member organizations, if any.

f. Applicable law under which the applicant was established.

g. Applicant's geographic service area: If available, please submit a map of the service area, and indicate the date prepared.

h. Describe whether the applicant owns and operates its own electric utility system.

i. Provide the date the applicant attained utility status, if applicable. 10 CFR 905.35 defines utility status to mean ''that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail customers.''

j. Describe the entity/organization that will interact with Western on contract and billing matters.

2. Applicant's Loads:

a. Utility and non-utility applicants:

(i) If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural).

(ii) Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) experienced in calendar year 2007.

b. Native American Tribe applicants only:

(i) Indicate the utility or utilities currently serving your loads.

(ii) If applicable, provide the number and type of customers served (e.g., residential, commercial, industrial, military base, agricultural).

(iii) Provide the actual monthly maximum demand (kilowatts) and energy use (kilowatt-hours) experienced in calendar year 2007. If the actual demand and energy data are not available or are difficult to obtain provide the estimated monthly demand.

(iv) If the demand and energy data in 2.b(iii) above is estimated, provide a description of the method and basis for this estimation.

3. Applicant's Resources:

a. A list of current power supplies if applicable, including the applicant's own generation as well as purchases from others. For each supply, provide the resource name, capacity supplied, and the resource's location.

b. For each power supplier, provide a description and status of the power supply contract (including the termination date).

c. For each power supplier, provide the type of power: Power supply is on a firm basis or power supply is not on a firm basis, please explain.

4. Transmission:

a. Points of delivery: Provide the requested point(s) of delivery on Western's transmission system (or a third-party's transmission system) the voltage of service required, and the capacity desired, if applicable.

b. Transmission arrangements: Describe the transmission arrangements necessary to deliver firm power to the requested points of delivery. Include a brief description of the applicant's transmission and distribution system including major interconnections. Provide a single-line drawing of applicant's system, if one is available.

c. Provide a brief explanation of the applicant's ability to receive and use, or receive and distribute Federal power as of January 1, 2008.

5. Other Information: The applicant may provide any other information pertinent to receiving an allocation.

6. Signature: Western requires the signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for an allocation.

The signature block must contain a certification stating: ''By signing below, I certify the information which I have provided is true and correct to the best of my information, knowledge and belief.'' Electronically submitted applications must contain an electronic signature, or in the alternative, the signature page with a signature should be faxed or mailed as provided for in the Addresses Section above.

Recordkeeping Requirements: If Western accepts your application and you receive an allocation of Federal power you must keep all records associated with your APD for a period of 3 years after you sign your contract for Federal power. If you do not receive an allocation of Federal power, there is no recordkeeping requirement.

Western has obtained an Office of Management and Budget (OMB) Control Number 1910–5136 for the collection of the above information.

B. Western's Consideration of Applications

1. When Western receives the APD, Western will verify that the applicant meets the General Eligibility Criteria set forth in Section II, and that the application contains all items requested in the APD.

a. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 15 days from the date on Western's letter of request to provide the information.

b. If Western determines the applicant does not meet the General Eligibility Criteria, Western will send a letter explaining why the applicant did not qualify.

c. If the applicant has met the General Eligibility Criteria, Western will determine the amount of firm power, if any, to allocate pursuant to the General Allocation Criteria set forth in Section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of firm power allocated to the applicant.

2. All firm power shall be allocated according to the procedures in the General Allocation Criteria set forth in Section III.

3. Western reserves the right to determine the amount of firm power to allocate to an applicant, as justified by the applicant in its APD.

Resource Pool Procedure Requirements

Environmental Compliance

Western completed an Environmental Impact Statement on the Program (DOE/EIS–0812), pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370(b), as amended and supplemented, (NEPA). The Record of Decision was published in the **Federal Register** on October 12, 1995, (60 FR 53181). Western's NEPA review assured

all environmental effects related to these actions have been analyzed.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number. The use of the referred to APD application form has been approved by OMB under the Control Number 1910–5136, expiration date September 30, 2011.

Dated: October 1, 2008.

Timothy J. Meeks,

Administrator.

[FR Doc. E8–24430 Filed 10–14–08; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0463; FRL–8730–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; RCRA Expanded Public Participation (Renewal); EPA ICR No. 1688.06, OMB Control No. 2050–0149

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 November 14, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0463, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, 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: Norma Abdul-Malik, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8753; fax number: 703–308–8617; e-mail address: *abdul-malik.norma@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 10, 2008 (73 *FR* 32703), 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–RCRA–2008–0463, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 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 RCRA Docket is (202) 566–0270.

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: RCRA Expanded Public Participation (Renewal).

ICR numbers: EPA ICR No. 1688.06, OMB Control No. 2050–0149.

ICR Status: This ICR is scheduled to expire on October 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: Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA. In addition, the statute specifies certain public notices (i.e., radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it.

EPA promulgated requirements for providing additional opportunities for the public to be involved in the RCRA permitting process at 40 CFR 124.31 through 124.33 and at 40 CFR 270.62 and 270.66. EPA believes that these regulations encourage people to become involved in the permitting process and increase understanding of hazardous waste facilities.

In summary, the expanded public participation regulations require:

- A permit applicant to provide notice of and hold an informal meeting with the public before submitting a Part B application, and to submit a summary of the meeting to the agency (§ 124.31);
- The Agency to issue a public notice when it receives an application (§ 124.32);
- Certain facilities (as decided by the Agency Director on a case-by-case basis) to set up and maintain an information repository (§ 124.33); and
- The Agency to issue a public notice of an upcoming trial burn at a permitted hazardous waste combustion facility (§§ 270.62(b)(6) and 270.66(d)(3)), or at a hazardous waste combustion facility operating under interim status (§§ 270.62(d) and 270.66(g)).

Burden Statement: The annual reporting and recordkeeping burden for this collection of information is estimated to average 91 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: Businesses and other for-profit.

Estimated Number of Respondents: 33.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 3,005.

Estimated Total Annual Cost: $180,288, which includes $176,791 for annualized labor costs and $3,497 for annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden hours currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: October 9, 2008.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E8–24598 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8728–7]

EPA Science Advisory Board Staff Office: Request for Nominations of Candidates for a Panel To Provide Advice on EPA's Dioxin Reassessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB or the Board) Staff Office is soliciting nominations of nationally recognized scientists for consideration of membership on an SAB Panel to provide advice on EPA's reassessment of the health risks from dioxin and related compounds.

DATES: Nominations should be submitted by November 5, 2008 per the instructions below.

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations please contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board Staff, at *armitage.thomas@epa.gov* or (202) 343–9995. General information concerning the SAB can be found on the SAB Web site at *http://www.epa.gov/sab*. Any inquiry regarding EPA's dioxin reassessment activity should be directed to Dr. Peter W. Preuss, Director, EPA National Center for Environmental Assessment at *preuss.peter@epa.gov* or (703) 347–8600. In addition, updated communication materials have been developed that provide further information on dioxin and EPA's dioxin reassessment activity. These materials are available on EPA's Web site at *http://www.epa.gov/ncea* under *Headlines* and also at *http://www.cfsan.fda.gov/lrd/dioxinqa.html*.

SUPPLEMENTARY INFORMATION:

Background: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. C) and related regulations. Generally, SAB meetings are announced in the **Federal Register**, conducted in public view, and provide opportunities for public input during deliberations. Additional information about the SAB and its committees can be obtained on the SAB Web site at: *http://www.epa.gov/sab*.

In 1991, EPA announced that it would conduct a scientific reassessment of the potential health risks of exposure to dioxin and related compounds. The SAB provided independent peer review and advice on EPA's dioxin reassessment. The SAB first reviewed the draft dioxin reassessment in 1995 and the document was revised to address SAB comments. In 2000, the SAB reviewed the integrated summary, risk characterization, and other information on toxic equivalency of dioxin-like compounds. Reports of the findings and recommendations of these SAB reviews are available on the SAB Web site at *http://www.epa.gov/sab* (see reports EPA–SAB–EC–95–021 and EPA–SAB–EC–01–006).

In 2003, EPA produced an external review draft of the multi-year comprehensive reassessment of dioxin exposure and human health effects (*http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87843*). This dioxin reassessment document, titled *Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds*, consisted of three parts: (1) A scientific review of information relating to sources and exposures to TCDD and other dioxins in the environment; (2) detailed reviews of scientific information on the health effects of TCDD, other dioxins, and dioxin-like compounds; and (3) an integrated summary and risk characterization for TCDD and related compounds.

In 2004, EPA asked the National Research Council of the National Academy of Sciences (NAS) to review the 2003 dioxin reassessment document. The NAS was charged with reviewing ''EPA's modeling assumptions (including those associated with dose-response curve and points-of-departure dose ranges and associated likelihood estimates identified for human health outcomes); EPA's quantitative uncertainty analysis; and EPA's selection of studies as a basis for its assessments and gaps in scientific knowledge.'' The NAS was also charged with addressing two points of controversy: (1) The scientific evidence for classifying dioxin as a human carcinogen, and (2) the validity of the nonthreshold low-dose linear dose-response model and the cancer slope factor calculated through the use of this model. In addition, EPA asked the NAS to comment on the usefulness of toxic equivalency factors (TEFs) and uncertainties associated with their use in risk assessment, as well as the uncertainty associated with EPA's approach to analysis of food sampling and human dietary intake data, taking into consideration the Institute of Medicine's report *Dioxin and Dioxin-like Compounds in the Food Supply: Strategies to Decrease Exposure*. In 2006, the NAS published its review titled *Health Risks from Dioxin and Related Compounds: Evaluation of the EPA Reassessment*. The NAS identified three areas that required substantial improvement to support a scientifically robust risk characterization. These three areas were: (1) Justification of approaches to dose-response modeling for cancer and non-cancer endpoints, (2) transparency and clarity in selection of key data sets for analysis, and (3) transparency, thoroughness, and clarity in quantitative uncertainty analysis. The NAS provided EPA with recommendations to address their key concerns. The full NAS report, including recommendations, is available

at *http://books.nap.edu/catalog.php?record_id=11688*.

EPA is now beginning to prepare a response to the NAS review of the dioxin reassessment. The Agency has requested that the SAB form an expert panel to provide independent advice regarding the draft technical plan, the revised draft, and the final draft of the EPA response to the recommendations of the NAS.

Expertise Sought: The SAB Staff Office requests nominations of recognized experts with specific experience and knowledge of dioxin in one or more of the following areas: (a) Epidemiology; (b) toxicology (with expertise in cancer, reproductive toxicology, developmental toxicology, immunotoxicology, dosimetry, toxicokinetics, mechanisms of action, or mixtures); (c) endocrinology; (d) lipid metabolism; (e) cardiovascular mechanisms of pathology; (f) risk assessment (with expertise in statistics, quantitative uncertainty analysis, or dose-response modeling); and (g) exposure assessment (with expertise in bioavailability, weathering, or effects of partitioning in environmental media).

How to Submit Nominations: Any interested person or organization may nominate qualified individuals to be considered for appointment on this SAB Panel. Candidates may also nominate themselves. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed'' provided on the SAB Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Thomas Armitage, DFO, at the contact information provided above in this notice. Non-electronic submissions must follow the same format and contain the same information as the electronic.

The SAB Staff Office will acknowledge receipt of the nomination and inform nominees of the panel for which they have been nominated. From the nominees identified by respondents to this **Federal Register** notice (termed the ''Widecast'') and other sources, the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. The Short List will be posted on the SAB Web site at *http://www.epa.gov/sab* and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 21 calendar days. During this comment period, the public will be requested to provide information, analysis, or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel.

For the SAB, a balanced panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently concerning the background of each candidate (e.g., financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual Panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Prospective candidates will be required to fill out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which include membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. Ethics information, including EPA Form 3110–48, is available on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument*.

Dated: October 6, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–24417 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1163; FRL–8383–2]

Guidance for Conducting Prospective Ground-Water Monitoring Studies, Response to Public Comments and Final Guidance; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the availability of the final Guidance for Conducting Prospective Ground-Water (PGW) Monitoring Studies and EPA's response to public comments on the development of the final PGW monitoring studies guidance. This PGW monitoring study, which is required on a case-by-case basis, is conducted in a controlled setting and provides EPA with data for evaluating the impact of legal pesticide use on ground-water quality. The PGW guidance document describes how to conduct a PGW monitoring study, milestones for consulting with EPA, and how to report results to EPA. Data generated from these field studies have proven valuable to EPA scientists and risk managers as they are specifically designed to relate pesticide use indicated on the label to measurements of the pesticide and its degradates in ground water used as a source of drinking water.

FOR FURTHER INFORMATION CONTACT: Betsy Behl, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6128; fax number: (703) 305–6309; e-mail address: *behl.betsy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1163. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

A. What Action is the Agency Taking?

The PGW monitoring study, which is required on a case-by-case basis (40 CFR 158.1300), is conducted in a controlled setting and provides the Agency with data for evaluating the impact of legal pesticide use on ground-water quality. After assessing the overall environmental fate of a pesticide, the Agency may require the pesticide manufacturer (registrant) to conduct a PGW monitoring study, with input from EPA on key aspects of the PGW monitoring study design. The Agency's assessment is based on a review of laboratory data on mobility and persistence of the compound, estimates of potential exposure, available monitoring and modeling information, and a consideration of the potential for risk from drinking-water exposure. Data generated from these field studies have proven valuable to EPA scientists and risk managers as they are specifically designed to relate pesticide use indicated on the label to measurements of the pesticide and its degradates in ground water used as a source of drinking water. The PGW guidance document describes how to conduct a PGW monitoring study, describes milestones for consulting with EPA, and describes how results should be reported to EPA. EPA uses the results of PGW monitoring studies to help answer questions such as:

1. Will the pesticide leach in portions of the pesticide use area that are similar to the field study area?
2. How do pesticide residues change over time?
3. What measures might be effective in mitigating the pesticide leaching?

Monitoring data generated in these PGW monitoring studies provide a time-series of concentrations that can be used in exposure and risk assessments as a reasonable surrogate for pesticide concentrations in drinking water drawn from shallow private wells in agricultural areas. PGW monitoring studies have been used to test alternative mitigation strategies for pesticides that have adversely affected ground-water quality to determine, for example, if a reduction in application rate or specific irrigation technology will reduce or eliminate the impact. Data from these PGW monitoring studies have also been used to develop the EPA regression screening model, Screening Concentration in Ground Water (SCI-GROW) (*http://www.epa.gov/oppefed1/models/water/models4.htm#scigrow*), which is used to estimate screening-level pesticide concentrations in ground water used as a source of drinking water. Currently, the results of these PGW monitoring studies are being used to evaluate models of subsurface pesticide transport, and as a basis for model scenarios for estimating pesticide concentrations in shallow-ground water.

The original draft guidance for PGW monitoring studies was developed primarily in the early 1990s and has been subjected to substantial public review and comment, including a public workshop sponsored by EPA in 1995 (Ref. 1), a Scientific Advisory Panel (SAP) review in 1998 (Ref. 2), and a request for final public comments in January 2008 (Ref. 3). From the January 2008 final request for comments, two public comments were received: California Department of Pesticide Regulation and Florida Department of Agriculture and Consumer Services (Ref. 4). Conference calls were held with these two commenters to discuss proposed revisions in response to their comments. The comments received during the workshop (Ref. 1) and SAP meeting (Ref. 2) provided valuable suggestions from both a technical and practical perspective and were used to revise the PGW monitoring studies guidance document and to address other issues identified in the Agency's review of PGW monitoring studies conducted for the registration of over 50 pesticides. EPA incorporated comments solicited from industry, academia, and consultants into the revised PGW monitoring studies guidance document. The recommendations in the PGW monitoring studies guidance document also represent the Agency's substantial experience, over the last decade, in developing and articulating effective procedures for collecting high-quality data on pesticide movement into ground water.

B. What is the Agency's Authority for Taking this Action?

This action is issued under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), section 3.

III. References

1. EPA. Prospective Ground-Water Monitoring Study 1995 Workshop Notes. Document Number: EPA–HQ–OPP–2007–1163–0009. Available on-line at: *http://www.regulations.gov*.

2. EPA. FIFRA Scientific Advisory Panel Meeting, October 14–15, 1998, Report. SAP Report No. 98–01. I—Review of Guidance Document for Small-Scale Prospective Ground-Water Monitoring Studies. November 19, 1998. Available on-line at: *http://www.epa.gov/scipoly/sap/meetings/1998/october/final.pdf*.

3. EPA. Guidance for Conducting Prospective Ground-Water Studies; Notice. **Federal Register** (73 FR 2910, January 16, 2008) (FRL–8347–5). Available on-line at: *http://www.epa.gov/fedrgstr*.

4. EPA. Response to Public Comments Document on the Guidance for Conducting Prospective Ground-Water Monitoring Studies. Document Number: EPA–HQ–OPP–2007–1163–0005. Available on-line at: *http://www.regulations.gov*.

List of Subjects

Environmental protection, Ground-water monitoring studies, Pesticides and pests.

Dated: October 8, 2008.

Donald J. Brady,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. E8–24414 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0653; FRL–8383–4]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period April 1, 2008 through June 30, 2008, to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9366.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0653. Publicly available docket materials are available either electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are a particular form of emergency exemption issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions: U.S. States and Territories

Arkansas

State Plant Board

Crisis: On June 5, 2008, for the use of imazethapyr on rice to control weeds (red rice). This program ended on July 20, 2008. Contact: Andrew Ertman.

California

Environmental Protection Agency, Department of Pesticide Regulation

Crisis: On May 15, 2008, for the use difenoconazole on almonds to control *Alternaria* leaf spot. This program ended on June 20, 2008. Contact: Stacey Groce.

Specific exemption: EPA authorized the use of lavanduly senecioate on raisin, wine, and table grapes to control the vine mealybug; April 9, 2008 to September 30, 2008. Contact: Andrew Ertman.

EPA authorized the use of propiconazole on peaches and nectarines to control sour rot; April 15, 2008 to September 30, 2008. Contact: Andrea Conrath.

Quarantine: EPA authorized the use of environ LpH (containing the active ingredients ortho-benzyl-para-chlorophenol, para-tertiary-amylphenol, and ortho-phenylphenol) in government laboratories to disinfect surfaces potentially contaminated with prions; March 26, 2008 to March 26, 2011. Contact: Princess Campbell.

Colorado

Department of Agriculture

Specific exemption: EPA authorized the use of acibenzolar on onions to control iris yellow spot virus; April 2, 2008 to September 1, 2008. Contact: Andrew Ertman.

EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to September 30, 2008. Contact: Andrew Ertman.

Florida

Department of Agriculture and Consumer Services

Crisis: On April 18, 2008, for the use of metconazole on sugarcane to control orange rust (*Puccinia kuehnii*). This program is expected to end on June 30, 2011. Contact: Libby Pemberton.

On April 18, 2008, for the use of pyraclostrobin on sugarcane to control orange rust (*Puccinia kuehnii*). This program is expected to end on June 30, 2011. Contact: Libby Pemberton.

Specific exemption: EPA authorized the use of thiophanate-methyl on vegetable, fruiting, group 8 to control white mold; April 24, 2008 to December 31, 2008. Contact: Andrea Conrath.

Georgia

Department of Agriculture

Crisis: On May 13, 2008, for the use of difenoconazole on cantaloupe, cucumber, and watermelon to control gummy stem blight. This program ended on June 30, 2008. Contact: Stacey Groce.

Idaho

Department of Agriculture

Specific exemption: EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to September 15, 2008. Contact: Andrew Ertman.

EPA authorized the use of linuron on lentil to control dog fennel and prickly lettuce; April 17, 2008 to June 10, 2008. Contact: Andrea Conrath.

Iowa

Department of Agriculture and Land Stewardship

Specific exemption: EPA authorized the use of sulfentrazone on strawberry to control broadleaf weeds; April 29, 2008 to June 10, 2008. Contact: Andrew Ertman.

Kentucky

Department of Agriculture

Crisis: On April 30, 2008, for the use of tebuconazole on wheat to control *Fusarium* head blight (FHB). This program ended on May 15, 2008. Contact: Libby Pemberton.

On June 6, 2008, for the use of diquat dibromide as a desiccant on canola. This program ended on June 20, 2008. Contact: Libby Pemberton.

Louisiana

Department of Agriculture and Forestry

Crisis: On June 5, 2008, for the use of imazethapyr on clearfield rice to control red rice. This program ended on June 19, 2008. Contact: Andrew Ertman.

On June 23, 2008, for the use of methoxyfenozide on sorghum to control southwestern corn borer and sugarcane borer. The program ended September 15, 2008. Contact: Stacey Groce.

Specific exemption: EPA authorized the use of pyraclostrobin on sugarcane to control brown rust (*Puccinia melanocephala*); April 29, 2008 to June 30, 2008. Contact: Libby Pemberton.

Michigan

Michigan Department of Agriculture

Specific exemption: EPA authorized the use of chlorothalonil on ginseng to control botrytis and alternaria blight; April 15, 2008 to October 31, 2008. Contact: Stacey Groce.

EPA authorized the use of mancozeb on ginseng to control alternaria blight; April 15, 2008 to October 31, 2008. Contact: Stacey Groce.

EPA authorized the use of zoxamide on ginseng to control phytophthora blight; April 15, 2008 to October 31, 2008. Contact: Stacey Groce.

EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to August 31, 2008. Contact: Andrew Ertman.

EPA authorized the use of anthraquinone on corn, field and sweet seed to repel sandhill cranes; April 18, 2008 to July 30, 2008. Contact: Marcel Howard.

EPA authorized the use of gentamicin on apples to control fire blight; April 24, 2008 to May 31, 2008. Contact: Andrew Ertman.

EPA authorized the use of tebuconazole on asparagus to control rust (*Puccinia species (spp.)*); May 30, 2008 to November 1, 2008. Contact: Libby Pemberton.

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 25, 2008 to December 15, 2008. Contact: Andrew Ertman.

Mississippi

Department of Agriculture and Commerce

Crisis: On June 5, 2008, for the use of imazethapyr on clearfield rice to control red rice. This program ended on June 19, 2008. Contact: Andrew Ertman.

Missouri

Department of Agriculture

Crisis: On June 5, 2008, for the use of imazethapyr on clearfield rice to control red rice. This program ended on June 19, 2008. Contact: Andrew Ertman.

New Jersey

Department of Environmental Protection

Specific exemption: EPA authorized the use of thiophanate methyl on tomato to control white mold; April 24, 2008 to October 31, 2008. Contact: Andrea Conrath.

New York

Department of Environmental Conservation

Specific exemption: EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to September 15, 2008. Contact: Andrew Ertman.

North Dakota

Department of Agriculture

Specific exemption: EPA authorized the use of sulfentrazone on flax to control kochia; April 15, 2008 to June 30, 2008. Contact: Andrew Ertman.

Ohio

Department of Agriculture

Specific exemption: EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to September 15, 2008. Contact: Andrew Ertman.

EPA authorized the use of thiophanate methyl on vegetable, fruiting, group 8 to control white mold; April 24, 2008 to November 18, 2008. Contact: Andrea Conrath.

EPA authorized the use of sulfentrazone on strawberries to control broadleaf weeds; June 20, 2008 to December 15, 2008. Contact: Andrew Ertman.

Oklahoma

Department of Agriculture

Crisis: On June 9, 2008, for the use of diquat dibromide as a desiccant on canola. This program ended on June 23, 2008. Contact: Libby Pemberton.

Oregon

Department of Agriculture

Crisis: On June 30, 2008, for the use of diflubenzuron on alfafa grown for hay, mixed grass/alfalfa hay, and grasses grown for seed to control grasshoppers and Mormon crickets. This program ended on July 15, 2008. Contact: Libby Pemberton.

Specific exemption: EPA authorized the use of bifenthrin on orchardgrass to control orchardgrass billbug; April 3, 2008 to November 15, 2008. Contact: Andrea Conrath.

EPA authorized the use of fipronil on turnip and rutabaga to control cabbage maggot; April 10, 2008 to September 30, 2008. Contact: Andrea Conrath.

EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to September 15, 2008. Contact: Andrew Ertman.

South Dakota

Department of Agriculture

Crisis: On April 10, 2008, for the use of anthraquinone on corn, field and sweet seed to repel ring-necked pheasant. This program ended on July 1, 2008. Contact: Marcel Howard.

Tennessee

Department of Agriculture

Crisis: On March 1, 2008, for the use of anthraquinone on corn, field and sweet seed to repel blackbird species and grackle. This program ended on July 30, 2008. Contact: Marcel Howard.

Texas

Department of Agriculture

Crisis: On June 5, 2008, for the use of imazethapyr on clearfield rice to control red rice. This program ended on July 20, 2008. Contact: Andrew Ertman.

On June 16, 2008, for the use of dinotefuran on rice to control rice stink bug. This program is expected to end on October 30, 2008. Contact: Libby Pemberton.

On June 27, 2008, for the use of fipronil up to ten feet out and three feet up on outdoor structures to control Caribbean crazy ant. This program is expected to end on September 1, 2011. Contact: Andrea Conrath.

Specific exemption: EPA authorized the use of hexythiazox on field corn to control the bank grass mite and two-spotted spider mite; May 15, 2008 to August 31, 2008. Contact: Andrew Ertman.

Washington

Department of Agriculture

Specific exemption: EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to August 30, 2008. Contact: Andrew Ertman.

EPA authorized the use of linuron on lentils to control dog fennel and prickly lettuce; April 17, 2008 to June 10, 2008. Contact: Andrea Conrath.

Wisconsin

Department of Agriculture, Trade, and Consumer Protection

Specific exemption: EPA authorized the use of formetanate hydrochloride on dry bulb onions to control thrips; April 17, 2008 to September 15, 2008. Contact: Andrew Ertman.

EPA authorized the use of chlorothalonil on ginseng to control botrytis and alternaria blight; April 22, 2008 to October 31, 2008. Contact: Stacey Groce.

EPA authorized the use of mancozeb on ginseng to control alternaria blight; April 22, 2008 to October 31, 2008. Contact: Stacey Groce.

EPA authorized the use of zoxamide on ginseng to control phytophthora blight; April 22, 2008 to October 31, 2008. Contact: Stacey Groce.

IV. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspector Service

Crisis: On March 3, 2008, for the use of methyl bromide on various imported raw agricultural commodities to control exotic plant pests. This program is expected to end on March 3, 2009. Contact: Libby Pemberton.

Quarantine: EPA authorized the use of *E*-11-tetradecen-1-yl acetate and *E,E*-9,11-tetradecadien-1-yl acetate on all raw agricultural commodities, and residential areas to control the light brown apple moth; April 15, 2008, to April 15, 2011. Contact: Andrew Ertman.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 30, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–24270 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0695; FRL–8384–8]

Kasugamycin; Receipt of Application for Emergency Exemption and Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan Department of Agriculture to use the pesticide kasugamycin (CAS No. 6980–18–3) to treat up to 10,000 acres of apples to control fire blight. The applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before October 30, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0695, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0695. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; fax number: (703) 605–0781; e-mail address: *ertman.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental Justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Michigan Department of Agriculture has requested the Administrator to issue a specific exemption for the use of kasugamycin on apples to control fire blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that kasugamycin is needed to control streptomycin-resistant strains of *Erwinia amylovora*, the causal pathogen of fire blight due to lack of available alternatives and effective alternative control practices. Without the use of kasugamycin, the applicant states that up to 50% of the yield of susceptible apple varieties could be lost in 2008.

The Applicant proposes to make no more than 4 applications of Kasumin 2L on 10,000 acres of apples between April 20 and May 31, 2009 in Berrien, Cass, Ionia, Kent, Montcalm, Newaygo, Oceana, Ottawa, and Van Buren counties in Michigan. As currently proposed, the maximum amount of product to be applied would be 20,000 gallons.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.

The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Michigan Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 29, 2008.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E8–24019 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0525; FRL–8395–6]

Carbaryl; Notice of Receipt of Requests to Voluntarily Cancel or to Terminate Uses of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests from Loveland Products, Inc., Value Garden Supply, and Helena Chemical Company to voluntarily amend their registrations to terminate uses of certain carbaryl products, or to eliminate certain application methods for carbaryl products. The requests would terminate carbaryl use in or on wheat, millet, and fresh/succulent beans and peas (crop subgroup 6B). These requests would also terminate the use of drench or dip treatments of seedlings or seed pieces, dust formulations in agricultural crops, granular applications to leafy vegetables (except brassica), direct applications (except for flea collars) to domestic animals (including dogs, cats, and other pets), and all indoor applications. The requests would not terminate the last carbaryl products registered for use in the United States. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw their requests within this period. Upon acceptance of these requests, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before November 14, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0525, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0525. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Christina Scheltema, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–8005; e-mail address: *scheltema.christina@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background on the Receipt of Requests to Cancel and to Amend Registrations to Terminate Uses

This notice announces receipt by EPA of requests from three registrants, listed in Table 2 below, to amend several carbaryl product registrations to terminate certain uses and eliminate certain application methods. Carbaryl is a broad-spectrum insecticide used on a variety of food and feed crops, ornamentals, turf, pasture, and rangeland. In letters dated September 2008, registrants of carbaryl products requested EPA to amend the product registrations identified in Table 1 of this notice to terminate certain uses and eliminate certain application methods. Specifically, these registrants are no longer supporting carbaryl use in or on wheat, millet, and fresh/succulent beans and peas (crop subgroup 6B). These requests would also terminate the use of drench or dip treatments of seedlings or seed pieces, dust formulations in agricultural crops, granular applications to leafy vegetables (except brassica), direct applications (except for flea collars) to domestic animals (including dogs, cats, and other pets), and all indoor applications. The complete list of affected registrations and registrants are identified in Tables 1 and 2, respectively. EPA's action on these requests will not terminate the last carbaryl products registered in the United States, or the last pesticide products registered in the United States for these uses.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of requests from various registrants to amend certain carbaryl product registrations to terminate various uses. The affected products, uses, and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period.

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

All of the carbaryl registrants listed in Table 2 have requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed requests.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling or amending the affected registrations in the following Table 1.

TABLE 1.—CARBARYL PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR AMENDMENTS

Registration Number	Product Name	Uses Being Terminated
769–574	Suregard Brand Sevin 80S Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); preplant dip (sweet potato); wheat
769–728	Sevin Brand Carbaryl Insecticide 5% Turf Insecticide Granules	Pea and bean, succulent shelled (subgroup 6B); leafy vegetables (except brassica)
769–971	Sevin Brand 80% DB	Pea and bean, succulent shelled (subgroup 6B); preplant dip (sweet potatoes); use of dust formulations in agricultural crops; wheat
769–972	Security Brand 50% Sevin Wettable	Pea and bean, succulent shelled (subgroup 6B)
769–976	Sevin Brand Carbaryl Insecticide 2% Granular Insecticide	Leafy vegetables (except brassica)
5887–43	Black Leaf Sevin Brand Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B); direct application to domestic animals (dogs and cats) and their dwellings/premises
5905–251	Helena Sevimol 4 Carbaryl Insecticide	Pea and bean, succulent shelled (subgroup 6B)
34704–289	10% Sevin Granules	Pea and bean, succulent shelled (subgroup 6B); leafy vegetables (except brassica)
34704–447	Carbaryl 4L	Pea and bean, succulent shelled (subgroup 6B); millet; wheat; sweet potato preplant root or seedling dips or drenches; all indoor applications

Table 2 of this unit includes the names and addresses of record for the registrants of the products listed in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION AND/OR AMENDMENTS

EPA Company Number	Company Name and Address
769	Value Garden Supply 9100 W. Bloomington Freeway Suite 113 Bloomington, MN 55431
5887	Value Garden Supply 9100 W. Bloomington Freeway Suite 113 Bloomington, MN 55431
5905	Helena Chemical Company 225 Schilling Boulevard Suite 300 Collierville, TN 38017
34704	Loveland Products, Inc. 7251 W 4th Street (80634) P.O. Box 1286 Greeley, CO 80632–1286

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Carbaryl

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before November 14, 2008. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

In any order issued in response to these requests for cancellation of product registrations and for amendments to terminate uses, the Agency proposes to include the following provisions for the treatment of any existing stocks of the products indentified or referenced in Table 1. Provided that these stocks bear labels previously approved by EPA, registrants may sell and distribute existing stocks of the affected products for 18 months from the effective date of the Agency's termination order.

If the request for voluntary cancellation and/or use termination is granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. EPA intends to publish the cancellation order in the **Federal Register** after the end of the 30–day comment period for this notice.

List of Subjects

Environmental protection, Pesticides and pests, Carbaryl, SEVIN®.

Dated: October 1, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–24271 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8728–5]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program for Concentrated Animal Feeding Operations (CAFOs); Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice: Proposed approval and hearing.

SUMMARY: The State of Ohio has submitted a request for the Environmental Protection Agency (EPA) to approve a revision to the Ohio National Pollutant Discharge Elimination System (NPDES) program to allow the Ohio Department of Agriculture (ODA) to administer the parts of the program pertaining to concentrated animal feeding operations (CAFOs) and storm water associated with construction activity at animal feeding operations (AFOs) in Ohio. The Ohio Environmental Protection Agency (Ohio EPA) currently administers the Ohio NPDES program in its entirety. Under the proposed revision, Ohio EPA would continue to implement all other aspects of the State's approved NPDES program. EPA Region 5 received Ohio's request in January 2007. In April and November 2007, EPA identified 31 technical and legal issues that ODA needs to resolve before EPA would be able to approve the ODA program. In a letter dated September 4, 2008, ODA committed to pursue specified statutory and administrative rule changes to address the issues identified by EPA. The ODA letter also included proposed statutory and rule changes beyond the scope of the changes needed to resolve the issues raised by EPA. ODA subsequently provided correct versions of certain proposed statutory and rule provisions that were not included with the September 4 letter. On October 3, 2008, EPA responded to ODA, stating its belief that enactment and adoption of the former changes would resolve EPA's issues, and that the latter changes proposed by ODA will not adversely affect ODA's authority to administer the NPDES program. The letter stated that EPA expects the adopted statutory and rule changes to be identical to those submitted with ODA's September 2008 letters. As a result, EPA proposes to approve Ohio's application contingent on the enactment and adoption of the former changes, as documented in ODA's September 4 letter. Today, EPA is requesting comment on the State's application to have ODA administer the NPDES program for CAFOs and for storm water associated with construction activity at AFOs, and is providing notice of a public hearing and comment period on the Agency's proposal to approve Ohio's application. EPA will either approve or disapprove the State's request after considering all comments it receives. A final decision to approve the program would be contingent on Ohio's enactment and adoption of the statutory and rule changes needed to resolve EPA's issues, as documented in ODA's September 4 letter.

DATES: The public comment period will close on December 16. Comments must

be received or postmarked by no later than 11:59 p.m. on December 16, 2008.

Open House and Public Hearing. An open house and public hearing will be held on November 18, 2008. The public hearing will be conducted in accordance with 40 CFR 124.12. It will provide interested parties with the opportunity to provide written and/or oral comments for the record. EPA, ODA and Ohio EPA staff will be available before the hearing to answer questions during the open house. The hearing and open house will be held on November 18, 2008, at the following location: The Fawcett Center, 2400 Olentangy River Road, Columbus, Ohio 43210.

The open house will be from 3–5:30 p.m. in the Clinton Room. The Public Hearing will be held in the auditorium, from 7 p.m. until all testimony is heard or 9:30 p.m., whichever is earlier.

Comments. Public comments may be in either paper or electronic format, although EPA encourages commenters to submit their comments electronically whenever possible. Send all paper copy comments to: Mr. Matt Gluckman, EPA Region 5, NPDES Programs Branch, WN–16J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Call Mr. Gluckman at (312) 886–6089 before hand delivery to verify business hours. EPA requests that electronic comments include the commenter's postal mailing address. No Confidential Business Information (CBI) should be submitted. Submit electronic comments at *http://www.epa.gov/region5/water/npdestek/odacafo.htm*.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that paper comments be typed or legibly written and that commenters cite the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope.

Viewing/Obtaining Copies of Documents. Copies of Ohio's application and all other documents in the official record are available for inspection at the following four locations:

(1) EPA Region 5 office at 77 West Jackson Boulevard, 16th floor, Chicago, Illinois. The office hours are 8:45 a.m. to 4:45 p.m. Monday through Friday, except federal holidays. Call (312) 886–6089 to set up an appointment.

(2) ODA's Livestock Environmental Permitting Program office in Reynoldsburg, Ohio, weekdays from 8–5 p.m. Call (614) 387–0908 to set up an appointment.

(3) Auglaize Soil and Water Conservation District Office (SWCD), 110 Industrial Drive, Suite G, in Wapakoneta, Ohio. Call (419) 738–4016 to set up an appointment.

(4) Wayne SWCD, 428 West Liberty St., Wooster, Ohio. Call (330) 262–2836 to set up an appointment.

You may also visit *http://www.epa.gov/region5/water/npdestek/odacafo.htm*. To request the application on compact disc, call Matt Gluckman at (800) 621–8431, extension 66089, or (312) 886–6089. See **SUPPLEMENTARY INFORMATION** for additional information.

FOR FURTHER INFORMATION CONTACT: Matt Gluckman, *gluckman.matthew@epa.gov*, at EPA Region 5, NPDES Programs Branch, WN–16J, 77 West Jackson Boulevard, Chicago, Illinois 60604, or (800) 621–8431, extension 66089, or (312) 886–6089.

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (CWA) established the NPDES program under which EPA may issue permits for the point source discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that EPA may approve a state to administer an equivalent state program, upon the Governor's request, provided that the state has appropriate legal authority and a program sufficient to meet the Act's requirements. The regulations applicable to state NPDES programs appear at 40 CFR part 123. They allow states to share administration of their NPDES programs among two or more agencies. 40 CFR 123.1(g) and 123.62(c). The CWA and NPDES regulations can be found at: *http://cfpub.epa.gov/npdes/regs.cfm?program_id=0*. EPA approved Ohio's request to implement the NPDES program on March 11, 1974. That approval recognized Ohio EPA as the agency responsible for implementing the State's approved program.

Under 40 CFR 123.62(c), states with approved NPDES programs must notify EPA whenever they propose to transfer all or part of any program from the approved state agency, and must identify any new division of responsibilities among the agencies involved. Under this section the new agency is not authorized to administer the program until the Regional Administrator approves the request. In a letter dated December 28, 2006, Ohio Governor Taft requested EPA's approval of Ohio's request to transfer authority to ODA to run the NPDES program for CAFOs and storm water associated with construction activity at AFOs in Ohio. The State's request included a program description, an amendment to the Memorandum of Agreement (MOA) between EPA and the State of Ohio, the statutes and rules ODA will use to implement its NPDES program for CAFOs, a statement of legal authority from the Ohio Attorney General, and supporting documentation. The program description addresses, among other topics, how Ohio intends to transfer implementation of the NPDES program for CAFOs from Ohio EPA to ODA.

EPA Region 5 received Ohio's request in January 2007. EPA completed its review of the application in the fall of 2007. EPA communicated the outcome of its review in April and November 2007 letters to ODA. The letters expressed concern regarding five provisions in ODA's standards for land application of manure, litter and process wastewater. The letters also asked ODA to clarify or revise 26 provisions of its legal authority or NPDES permitting requirements. In a letter dated September 4, 2008, ODA committed to pursue specified statutory and rule changes to address the issues identified by EPA. ODA's letter also included other proposed statutory and regulatory changes beyond the scope of the changes needed to resolve the issues raised by EPA. ODA subsequently provided correct versions of certain proposed statutory and rule provisions that were not included with the September 4 letter. On October 3, 2008, EPA responded to ODA, stating its belief that enactment and adoption of the changes ODA has committed to pursue would resolve EPA's issues, and that the additional changes proposed by ODA will not adversely affect ODA's authority to administer the NPDES program.

Following consideration of public comments and testimony, EPA will make a final decision regarding the State's request in accordance with section 402(b) of the CWA and 40 CFR part 123, including 123.62(b). To obtain EPA approval of this revision to Ohio's approved program, the State must show, among other things, that ODA has the authority to: (1) Issue proper permits for CAFOs and storm water discharges from construction of AFOs, (2) impose civil and criminal penalties for violations, and (3) ensure that the public is given notice and an opportunity for a hearing on each proposed permit within the scope of ODA's jurisdiction. As discussed above, in this case, final approval of the State's request is contingent on Ohio's enactment and adoption of the changes to Ohio law and administrative rules needed to resolve EPA's issues, as documented in ODA's September 4 letter. Upon enactment and adoption of these changes, the State will

need to provide for EPA's review an Attorney General's statement that has been updated to reflect the adopted provisions. Upon review of the adopted provisions, EPA will request a revised program description and a revised MOA, should they be necessary. After the close of the comment period, the Regional Administrator for EPA Region 5 will approve or disapprove Ohio's request for ODA to implement the NPDES program for CAFOs based on the requirements of section 402 of the Act and 40 CFR part 123. If the Regional Administrator approves the request, she will so notify the State and sign the proposed MOA. Notice would be published in the **Federal Register** and, as of the date of program approval, authority to issue and enforce NPDES permits for CAFOs and for construction-related stormwater from AFOs in Ohio would shift from Ohio EPA to ODA in accordance with the State's transition process described in its program description. If the Regional Administrator disapproves Ohio's request, the State will be notified of the reasons for disapproval and of any revisions or modifications to the program that are necessary to obtain approval.

Open House. EPA, ODA and Ohio EPA staff will be available before the public hearing to answer questions.

Public Hearing Procedures. The public hearing will be conducted in accordance with 40 CFR 124.12. It will provide interested parties with the opportunity to give written and/or oral comments for the official record. The following procedures will be used at the public hearing. (1) The Presiding Officer will conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may inform attendees of any time limits during the opening statement of the hearing. (2) Any person may submit written statements or documents for the hearing record. (3) The Presiding Officer may, in his or her discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the proposal to approve the revision to the Ohio NPDES program. (4) The transcript taken at the hearing, together with copies of all submitted statements and documents, will become a part of the record submitted to the Regional Administrator. (5) Hearing statements may be oral or written. EPA encourages submission of written copies of oral statements for accuracy of the record and for use of the Hearing Panel and other interested persons. Persons wishing to make oral testimony supporting their written comments are encouraged to give a summary of their points rather than reading lengthy written comments verbatim into the record. All comments received by EPA Region 5 by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on Ohio's request for ODA to implement the NPDES program for CAFOs.

Summary of Ohio's Submission. Ohio has requested to transfer the responsibility of regulating CAFOs and storm water associated with construction of AFOs under the NPDES program from Ohio EPA to ODA. This transfer would include, but not be limited to regulation of manure, litter, and process wastewater and construction and industrial storm water discharges from CAFOs, and construction-related storm water discharges from other AFOs. If Ohio's request is approved, Ohio EPA would continue to be responsible for implementing all other aspects of the State's approved NPDES program. ODA's proposed program is described in documents the State has submitted in accordance with 40 CFR 123.62, which include the following: A letter from the Governor requesting approval of the transfer; a program description outlining the procedures, personnel and protocols that will be relied on to implement ODA's permitting, compliance and enforcement program; a revision to the MOA between EPA and the State of Ohio; the statutes and rules ODA will use to implement its NPDES program; and a statement of legal authority signed by the Ohio Attorney General that describes ODA's authority to implement a program equivalent to the federal NPDES program with respect to CAFOs and storm water associated with construction of AFOs. The program description addresses, among other topics, how Ohio intends to transfer implementation of the NPDES program for CAFOs and for storm water associated with construction at AFOs from Ohio EPA to ODA. The following is a summary of these documents:

Governor's Letter: Ohio's application includes a letter dated December 28, 2006, from Governor Bob Taft officially requesting approval to transfer from Ohio EPA to ODA the responsibility for administering and enforcing the NPDES program for CAFOs in Ohio pursuant to section 402(b) of the Act and 40 CFR part 123.

Program Description: Pursuant to 40 CFR 123.62(b), EPA may require that a proposed revision to a state program include a modified program description. The program description must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the state program; a description of the organization and structure, staffing and position descriptions for the lead state agency; and itemized costs and funding sources for the program for the first two years after program approval. It must describe all applicable state procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the state's compliance and enforcement tracking program. ODA's program description includes the required information.

Memorandum of Agreement (MOA): Pursuant to 40 CFR 123.62(b), EPA may require that a proposed revision to a state program also include a modified MOA. The MOA must meet the minimum requirements of 40 CFR 123.24. An MOA is a document signed by each Agency, committing them to specific responsibilities relevant to the administration and enforcement of the state's program. An MOA specifies these responsibilities and provides structure for the state's program management and EPA's oversight of the state program. The revised MOA submitted by the State of Ohio has been signed by the Directors of ODA and the Ohio EPA. The Regional Administrator of EPA Region 5 will sign the document if she determines that Ohio's application is approvable after all comments received during the comment period have been considered.

Attorney General's Statement: Pursuant to 40 CFR 123.62(b), EPA may require that a proposed revision to a state program include an Attorney General's Statement. Such statements must meet the minimum requirements of 40 CFR 123.23. The Attorney General must certify that the state has lawfully adopted statutes and regulations which provide the state agency with the legal authority to administer a permitting program within the scope of its jurisdiction in compliance with 40 CFR part 123. The Attorney General's Statement from Ohio describes and cites State legal authority it believes adequate to authorize ODA to administer the NPDES program for CAFOs and storm water associated with construction activity at AFOs described in the program description. The Attorney General's Statement will need to be updated to reflect the adopted revisions to Ohio's laws and rules. Upon review of the adopted provisions, EPA will also

request a revised program description and a revised MOA, should they be necessary.

Results of EPA's Review. EPA completed its review of Ohio's application in the fall of 2007. EPA communicated the results of its review in April and November 2007 letters to ODA. The letters expressed concern regarding five provisions in ODA's standards for land application of manure, litter and process wastewater. The letters also asked ODA to clarify or revise 26 provisions of its legal authority or NPDES permitting requirements.

In a letter dated September 4, 2008, ODA's Director committed to pursue specified statutory and rule changes to address the issues identified by EPA. The Director's letter also included other proposed statutory and rule changes beyond the scope of the changes needed to resolve the issues raised by EPA. In letters dated September 22, 2008, ODA provided correct versions of certain proposed statutory and rule provisions that were not included with the September 4 letter. EPA believes that the former changes ODA has committed to pursue will resolve EPA's issues, and that the latter changes will not adversely affect ODA's authority to administer the NPDES program. All of ODA's proposed changes were included in the September 4 and 22 letters, and are available for public review as part of the official public record.

Status of EPA's CAFO Rule. EPA is in the process of revising portions of the NPDES permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for CAFOs. EPA is acting in response to the order issued by the U.S. Court of Appeals for the Second Circuit in *Waterkeeper Alliance et al.* v. *EPA,* 399 F.3d 486 (2nd Cir. 2005), vacating or remanding portions of the 2003 rule. Ohio may need to further revise its NPDES program to implement these federal revisions when they are finalized. EPA will provide Ohio the same time period from the promulgation date of the revised federal rule to change its legal authority that EPA provides to other states with approved NPDES programs. 40 CFR 123.62(e). This rule gives states one year where rule changes are needed and two years where statutory changes are needed to incorporate new federal regulations into state law. This future process is separate from the process described above regarding Ohio's request for ODA to administer the NPDES program for CAFOs and for storm water associated with construction of AFOs.

Public Comment on the Described Program. Today, EPA is requesting comments on Ohio's request, and providing notice of a public hearing and comment period on EPA's proposal to approve Ohio's application in accordance with 40 CFR 123.62. EPA wants the citizens of Ohio to understand the State's application, and wants to encourage public participation in the decisionmaking process. Therefore, EPA requests that the public review ODA's proposed NPDES program for CAFOs and storm water associated with construction activity at AFOs, and provide any comments they feel are appropriate. EPA will consider all comments in its decision. EPA will either approve or disapprove the State's request after considering all comments it receives. EPA expects the adopted statutory and rule changes to be identical to those submitted with ODA's September 2008 letters.

Authority: This action is taken under the authority of section 402 of the Clean Water Act as amended, 33 U.S.C. 1342. I hereby provide public notice of the application by the State of Ohio for the Ohio Department of Agriculture to implement the NPDES program for CAFOs and storm water associated with construction activity at AFOs, in accordance with 40 CFR 123.62.

Dated: October 3, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E8–24175 Filed 10–14–08; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Thursday, October 23, 2008, 10 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. Issues Facing Hispanics in the Federal Workplace—Invited Panelists.

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 and TTY numbers listed above. *Contact Person for More Information:* Stephen Llewellyn, Executive Officer, on (202) 663–4070.

Dated: October 9, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. E8–24609 Filed 10–10–08; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final

approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before December 15, 2008.

ADDRESSES: You may submit comments, identified by *Reg B or Reg E*, by any of the following methods:

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

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

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

Agency form number: Reg B.

OMB control number: 7100–0201.

Frequency: Event-generated.

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

Annual reporting hours: 170,000 hours.

Estimated average hours per response: Notice of action, 2.5 minutes; credit history reporting, 2 minutes; recordkeeping for applications & actions, 8 hours; monitoring data, 0.50 minutes; appraisal report upon request, 5 minutes; notice of right to appraisal, 0.25 minutes; recordkeeping of self test, 2 hours; recordkeeping of self corrective action, 8 hours; and disclosure of optional self-test, 1 minute.

Number of respondents: 1,205.

General description of report: This information collection is mandatory (15 U.S.C. 1691 (b)(a)(1)). The adverse action disclosure is confidential between the institution and the consumer involved. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, the information may be protected from disclosure under the exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)).

Abstract: The Equal Credit Opportunity Act and Regulation B prohibit discrimination in any aspect of a credit transaction because of race, color, religion, national origin, sex, marital status, age, or other specified bases. To aid in implementation of this prohibition, the statute and regulation also subject creditors to various mandatory disclosure requirements, notification provisions, credit history reporting, monitoring rules, and recordkeeping requirements. These requirements are triggered by specific events and disclosures must be provided within the time periods established by the Act and regulation.

2. *Report title:* Recordkeeping and Disclosure Requirements in Connection with Regulation E (Electronic Funds Transfer).

Agency form number: Reg E.

OMB control number: 7100–0200.

Frequency: Event-generated.

Reporters: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and Edge and agreement corporations.

Annual reporting hours: 59,902 hours.

Estimated average hours per response: Initial terms disclosure, 1.5 minutes; change in terms disclosure, 1 minute; periodic disclosure, 7 hours; and error resolution rules, 30 minutes.

Number of respondents: 1,205.

General description of report: This information collection is mandatory (15 U.S.C. 1693 *et seq.*). The disclosures required by the rule and information about error allegations and their resolution are confidential between the institution and the consumer. Since the Federal Reserve does not collect any information, no issue of confidentiality arises. However, the information, if made available to the Federal Reserve, may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 552 (b)(4), (6), and (8)).

Abstract: The Electronic Funds Transfer Act and Regulation E are designed to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. Institutions offering EFT services must disclose to consumers certain information, including: Initial and updated EFT terms, transaction information, periodic statements of activity, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures. EFT services include automated teller

machines, telephone bill payment; point-of-sale transfers in retail stores, fund transfers initiated through the Internet, and preauthorized transfers to or from a consumer's account.

Board of Governors of the Federal Reserve System, October 8, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–24348 Filed 10–14–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829). OMB Desk Officer—Kimberly P. Nelson—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Reports

1. *Report title:* Survey of Terms of Lending.

Agency form number: FR 2028A, FR 2028B, and FR 2028S.

OMB control number: 7100–0061.

Frequency: Quarterly.

Reporters: Commercial banks; and U.S. branches and agencies of foreign banks (FR 2028A and FR 2028S only).

Annual reporting hours: 6,840 hours.

Estimated average hours per response: FR 2028A, 3.4 hours; FR 2028B, 1.2 hours; and FR 2028S, 0.1 hours.

Number of respondents: FR 2028A, 398; FR 2028B, 250; and FR 2028S, 567.

General description of report: This information collection is authorized by section 11(a)(2) of the Federal Reserve Act [12 U.S.C. 248(a)(2)] and is voluntary. Individual responses are regarded as confidential under the Freedom of Information Act [5 U.S.C. 552(b)(4)].

Abstract: The Survey of Terms of Lending provides unique information concerning both price and certain nonprice terms of loans made to businesses and farmers during the first full business week of the mid-month of each quarter (February, May, August, and November). The survey comprises three reporting forms: The FR 2028A, Survey of Terms of Business Lending; the FR 2028B, Survey of Terms of Bank Lending to Farmers; and the FR 2028S, Prime Rate Supplement to the Survey of Terms of Lending. The FR 2028A and FR 2028B collect detailed data on individual loans made during the survey week, and the FR 2028S collects the prime interest rate for each day of the survey from both FR 2028A and FR 2028B respondents. From these sample data, estimates of the terms of business loans and farm loans extended during the reporting week are constructed. The aggregate estimates for business loans are published in the quarterly E.2 release, *Survey of Terms of Business Lending,* and aggregate estimates for farm loans are published in the quarterly E.15 release, *Agricultural Finance Databook.*

Current Actions: On August 4, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 45222) requesting public comment for 60 days on the extension, with revision, of the FR 2028. The comment period for this notice expired on October 3, 2008. The Federal Reserve did not receive any comments on the proposed revisions. The revisions will be implemented as proposed.

2. *Report title:* Report of Terms of Credit Card Plans.

Agency form number: FR 2572.

OMB control number: 7100–0239.

Frequency: Semi-annual.

Reporters: Commercial banks, savings banks, industrial banks, and savings and loans associations.

Annual reporting hours: 75 hours.

Estimated average hours per response: 0.25 hours.

Number of respondents: 150.

General description of report: This information collection is voluntary (15 U.S.C. 1646(b)) and is not given confidential treatment.

Abstract: This report collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards to the general public. The information is reported to the Congress and made available to the public in order to promote competition within the industry.

Current Actions: On August 4, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 45222) requesting public comment for 60 days on the extension, with revision, of this information collection. The comment period for this notice expired on October 3, 2008. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

3. *Report title:* The Report of Transaction Accounts, Other Deposits and Vault Cash.

Agency form number: FR 2900.

OMB control number: 7100–0087.

Frequency: Weekly, quarterly.

Reporters: Depository institutions.

Annual reporting hours: 615,902 hours.

Estimated average hours per response: 3.50 hours.

Number of respondents: 2,996 weekly and 5,045 quarterly.

General description of report: This information collection is mandatory (12 U.S.C. 248(a), 461, 603, and 615) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: Nonexempt institutions—defined as those with net transaction accounts greater than the exemption amount or with the sum of total transaction accounts, savings deposits, and small time deposits equal to or greater than the reduced reporting limit—file the fifteen-item FR 2900 weekly if the sum of their total transaction accounts, savings deposits, and small time deposits is equal to or greater than the nonexempt deposit cutoff and quarterly if the sum of their total transaction accounts, savings deposits, and small time deposits is less than the nonexempt deposit cutoff. U.S. branches and agencies of foreign banks and banking Edge and agreement corporations are required to submit FR 2900 data weekly regardless of their deposit size. These mandatory data are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and monitoring the monetary and reserve aggregates.

Current Actions: On August 4, 2008, the Federal Reserve published a notice

in the **Federal Register** (73 FR 45222) requesting public comment for 60 days on the extension, with revision, of this information collection. The comment period for this notice expired on October 3, 2008. The Federal Reserve did not receive any substantive comments. The revisions will be implemented as proposed.

4. *Report title:* The Annual Report of Deposits and Reservable Liabilities.

Agency form number: FR 2910a.

OMB control number: 7100–0175.

Frequency: Annually.

Reporters: Depository institutions.

Annual reporting hours: 3,659 hours.

Estimated average hours per response: 0.75 hours.

Number of respondents: 4,878.

General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: Currently, the three-item FR 2910a is generally filed by exempt institutions whose net transaction accounts are less than or equal to the exemption amount and whose sum of total transaction accounts, savings deposits, and small time deposits is less than the reduced reporting limit but total deposits are greater than the exemption amount. Respondents submit single-day data as of June 30. These mandatory data are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and monitoring the monetary and reserve aggregates.

Current Actions: On August 4, 2008, the Federal Reserve published a notice in the **Federal Register** (73 FR 45222) requesting public comment for 60 days on the extension, with revision, of this information collection. The comment period for this notice expired on October 3, 2008. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, October 8, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–24349 Filed 10–14–08; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 28, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. Peggy J. Wisdom, M.D., Edmond, Oklahoma, individually and as Personal Representative of the Estate of Grace V. Wisdom, to retain control of Grace Investment Company, Inc., and thereby indirectly retain control of Alva State Bank and Trust Company, both of Alva, Oklahoma, and First National Bank in Okeene, Okeene, Oklahoma.

Board of Governors of the Federal Reserve System, October 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–24345 Filed 10–14–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications 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 November 7, 2008.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Grace Investment Company, Inc. ESOP, to become a bank holding company by acquiring 30 percent of the voting shares of Grace Investment Company, Inc., and thereby indirectly acquire voting shares of Alva State Bank & Trust Company, all of Alva, Oklahoma, and First National Bank in Okeene, Okeene, Oklahoma.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. CBFH, Inc., Orange, Texas, to merge with Crosby Bancshares, Inc., Crosby, Texas, and thereby indirectly acquire Crosby Bancshares of Delaware, Inc., Wilmington, Delaware, and Crosby State Bank, Crosby, Texas.

In connection with the above application, Hillister Enterprises, II, Inc., and Umphrey II Family Limited Partnership, both of Beaumont, Texas, also have applied to acquire the successor by merger of Crosby Bancshares, Inc., Crosby, Texas, and CBFH, Inc., Orange, Texas.

Board of Governors of the Federal Reserve System, October 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–24347 Filed 10–14–08; 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; Correction

This notice corrects a notice (FR Doc. E8-23644) published on pages 58592 and 58593 of the issue for Tuesday, October 7, 2008.

Under the Federal Reserve Bank of Richmond, the entry for Bank of

America Corporation, Charlotte, North Carolina, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Bank of America Corporation, Charlotte, North Carolina, to acquire 100 percent of the voting shares of Merrill Lynch Bank & Trust Co., FSB, New York, New York, and Merrill Lynch Bank USA, Salt Lake City, Utah, and thereby engage in operating a savings association and an industrial bank, pursuant to section 225.28(b)(4) of Regulation Y.

In connection with the above application, Bank of America Corporation, Charlotte, North Carolina, has also applied to acquire up to 19.9 percent of the voting shares of Merrill Lynch & Company, Inc., New York, New York, and thereby engage in operating a savings association and an industrial bank, pursuant to section 225.28(b)(4) of Regulation Y.

Comments on this application must be received by October 31, 2008.

Board of Governors of the Federal Reserve System, October 8, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–24346 Filed 10–14–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), October 20, 2008.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the September 15, 2008 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Legislative Report.
3. Quarterly Reports.
   a. Investment Policy Review.
   b. Vendor Financial Reports.
4. Mid-Year Financial Audit.

Parts Closed to the Public

5. Procurement.
6. Confidential Financial Information.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 9, 2008.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E8–24571 Filed 10–10–08; 4:15 pm]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 071 0212]

Hexion LLC and Huntsman Corporation; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

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

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Huntsman-Hexion, File No. 071 0212,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form by following the instructions on the web-based form at (*http://secure.commentworks.com/ftc-HuntsmanHexion*). To ensure that the Commission considers an electronic comment, you must file it on that web-based form.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*)

FOR FURTHER INFORMATION CONTACT: Wallace W. Esterling, FTC Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2936.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 2, 2008), on the World Wide Web, at (*http://www.ftc.gov/os/2008/10/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be

[1]The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order from Hexion LLC and Huntsman Corporation (''Respondents''). The Consent Agreement is intended to resolve anticompetitive effects stemming from Hexion LLC's (''Hexion'') proposed acquisition of Huntsman Corporation (''Huntsman''). The Consent Agreement includes a proposed Decision and Order that requires Respondent Hexion to divest its Specialty Epoxy Resin Product Business, which includes the research, development, manufacture, distribution, marketing, and sale of each Specialty Epoxy Resin Product; its Stuttgart (Germany) Assets; and other assets related to such business, including, but not limited to, Duisburg (Germany), parts of Norco (Louisiana), Bedford Park (Illinois), and Houston (Texas); among other things. The proposed Decision and Order also requires the licensing of all Hexion intellectual property related to the production of Specialty Epoxy Resins. The Decision and Order calls for divestiture of Hexion's Specialty Epoxy Business to Spolek Pro Chemickou A Hutni Vyrobu (''Spolek or Spolchemie''), or another Commission-approved buyer in the event that Spolek is determined not to be acceptable.

Additionally, the Decision and Order requires Hexion to institute procedures to ensure that the methylene diphenyl diisocyanate (also referred to as diphenylmethane diisocyanate) (''MDI'') business it acquired from Huntsman not have access directly or indirectly to competitively sensitive non-public information obtained by its formaldehyde division.

The proposed Consent Agreement and Decision and Order are designed to address competition concerns in the Specialty Epoxy Resin and MDI markets. The Consent Agreement, if finally accepted by the Commission, would settle charges that the proposed acquisition may substantially lessen competition in the various application specific end-use markets for Specialty Epoxy Resins and the market for MDI. The Commission has reason to believe that Respondent's proposed acquisition would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

II. The Proposed Complaint

According to the Commission's proposed complaint, the relevant product markets in which to analyze the effects of Huntsman's sale of assets to Hexion are the markets for the development, manufacture, and sale of Specialty Epoxy Resins, various application specific end-use markets in North America in which these resins are used, and the market for MDI.

Specialty epoxy resins are value added high performance epoxy resin products, including, but not limited to, blends, formulations, advanced resins, and multifunctional resins. Specialty Epoxy Resins are used with curing agents, modifiers, and other ingredients and components necessary to the use of these resins. Specialty Epoxy Resins are used in demanding applications where enhanced performance is required, such as aerospace composites, wind turbine blades, and electric power generation applications. The relevant geographic market is North America. Additionally, Specialty Epoxy resins sold into each application segment constitute distinct application specific end-use product markets.

MDI is a diisocyanate chemical used in various applications, including construction insulation, refrigeration, and composite wood products. Formaldehyde, a versatile chemical, is an essential ingredient used in the manufacture of MDI. It provides useful characteristics such as desirable insulating and mechanical properties, while avoiding many of the harmful characteristics associated with the use of pure formaldehyde, which is a carcinogen. The relevant geographic market is North America.

The proposed complaint alleges that the various application specific end-use markets for Specialty Epoxy Resins in North America and the market for MDI are highly concentrated. Hexion and Huntsman have been the primary competitors in the market for Specialty Epoxy Resins for many years. According to the proposed complaint, Hexion and Huntsman account for between 90 and 60 percent of sales in the various application specific end-use markets in North America. They each had close to $1 billion in sales of Specialty Epoxy Resins in 2007. There are only four producers of MDI in the United States: Huntsman, Dow Chemical, BASF, and Bayer. MDI imports are minimal, and Hexion provides formaldehyde to all MDI producers in the U.S., except Dow. Hexion, as a supplier of formaldehyde to MDI producers, receives competitively sensitive non-public information from three of the four MDI producers. Such information includes MDI production forecasts, MDI demand forecasts and updates to these forecasts on a weekly basis, MDI projected long term forecasts, and schedules for periodic shutdowns of MDI production facilities supplied by Hexion. Thus, the market for MDI and the formaldehyde used in its production is highly concentrated. Total U.S. sales of MDI in 2007 were approximately $2 billion.

The proposed complaint alleges that the proposed acquisition would reduce competition for Specialty Epoxy Resins in the various application specific end-use markets in North America by eliminating direct competition between these two companies, and by increasing the likelihood that unilateral market power will be exercised. As to MDI, the complaint alleges that the likelihood of coordinated interaction among competitors is increased as a result of the proposed acquisition.

III. Terms of the Proposed Order

Under the proposed Decision and Order, Hexion will divest its Specialty Epoxy Resins Business, and related assets, to Spolek within ten (10) days after Hexion acquires Huntsman. Spolek, based in the Czech Republic, develops, manufactures, and markets a wide range of commodity or basic epoxy resins. The divestiture will allow Spolek to enter the Specialty Epoxy Resins market. Similar to Hexion, post-divestiture Spolek will participate in both the commodity and Specialty Epoxy Resins markets, which will position Spolek to compete effectively in the market.

The proposed Decision and Order requires Hexion to divest its Duisburg, Germany; Stuttgart, Germany; Norco, Louisiana; Bedford Park, Illinois; and Houston, Texas facilities and their related assets. This will provide Spolek all assets and know-how necessary for the research, development, production and sale of Specialty Epoxy Resins.

In addition, the proposed Decision and Order requires Hexion to institute procedures to ensure that its acquired MDI business not have access directly, or indirectly, to competitively sensitive non-public information obtained by its formaldehyde division. The Decision and Order prohibits Hexion from using any competitively sensitive non-public information obtained from its competitors in an anticompetitive manner.

IV. Opportunity for Public Comment

The proposed Decision and Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received

during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order.

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and the proposed Decision and Order.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. E8–24429 Filed 10–14–08: 8:45 am]

BILLING CODE 6750–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0112]

Information Collection; Federal Management Regulation; GSA Form 3040, State Agency Monthly Donation Report of Surplus Property

AGENCY: Federal Acquisition Service, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding GSA Form 3040, State Agency Monthly Donation Report of Surplus Property. The clearance currently expires on October 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Joyce Spalding, Federal Acquisition Service, GSA at telephone (703) 605–2888 or via e-mail to *joyce.spalding@gsa.gov*.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4035, 1800 F Street, NW., Washington, DC 20405. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

This report complies with Public Law 94–519, which requires annual reports of donations of personal property to public agencies for use in carrying out such purposes as conservation, economic development, education, parks and recreation, public health, and public safety.

B. Annual Reporting Burden

Respondents: 56.
Responses Per Respondent: 4.
Total Responses: 224.
Hours Per Response: 1.5.
Total Burden Hours: 330.
Obtaining copies of proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0112, GSA Form 3040, State Agency Monthly Donation Report of Surplus Personal Property, in all correspondence.

Casey Coleman,

Chief Information Officer.

[FR Doc. E8–24422 Filed 10–14–08; 8:45 am]

BILLING CODE 6820–YT–S

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin PBS–2008–B6]

Federal Management Regulation; Redesignations of Federal Buildings

AGENCY: Public Buildings Service (P), GSA

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignations of six Federal buildings.

EXPIRATION DATE: This bulletin expires March 1, 2009. However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT: U.S. General Services Administration, Public Buildings Service (P), Attn: Anthony E. Costa, 1800 F Street, NW, Washington, DC 20405; e-mail: *anthony.costa@gsa.gov*; telephone: (202) 501–1100.

Dated: September 30, 2008

James A. Williams,

Acting Administrator of General Services

U.S. GENERAL SERVICES ADMINISTRATION

FMR BULLETIN PBS–2008–B6

REDESIGNATIONS OF FEDERAL BUILDINGS

TO: Heads of Federal Agencies

SUBJECT: Redesignations of Federal Buildings

1. *What is the purpose of this bulletin*? This bulletin announces the redesignations of six Federal buildings.

2. *When does this bulletin expire*? This bulletin expires March 1, 2009. However, the building redesignations announced in this bulletin will remain in effect until canceled or superseded.

3. *Redesignations*. The former and new names of the redesignated buildings are as follows:

Former Name	*New Name*
United States Bankruptcy Courthouse, Bankruptcy Courthouse, 271 Cadman Plaza East, Brooklyn, NY 11201	Conrad Duberstein United States, Bankruptcy Courthouse, 271 Cadman Plaza East, Brooklyn, NY 11201
Federal Building, 138 West First Street, Port Angeles, WA 98362	Richard B. Anderson Federal Building, 138 West First Street, Port Angeles, WA 98362
United States Courthouse, 1716 Spielbusch Avenue, Toledo, OH 43604	James M. Ashley and Thomas W.L. Ashley United States Courthouse, 1716 Spielbusch Avenue, Toledo, OH 43604
Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, NY 10601	Charles L. Brieant, Jr., Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, NY 10601
United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201	Theodore Roosevelt United States Courthouse, 225 Cadman Plaza East, Brooklyn, NY 11201

Former Name	New Name
United States Courthouse, 701 East Broad Street, Richmond, VA 23219	Spottswood W. Robinson III and Robert R. Merhige, Jr., United States Courthouse, 701 East Broad Street, Richmond, VA 23219

4. *Whom should we contact for further information regarding redesignation of these Federal buildings*? U.S. General Services Administration, Public Buildings Service (P),Attn: Anthony E. Costa, 1800 F Street, NW, Washington, DC 20405;telephone number: (202) 501–1100; e-mail:*anthony.costa@gsa.gov*.

Dated: September 30, 2008

James A. Williams,

Acting Administrator of General Services

[FR Doc. E8–24425 Filed 10–14–08; 8:45 am]

BILLING CODE 6820–23–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–245]

Availability of an Update to the ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (DHHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of an Update to the ATSDR Policy Guideline for Dioxins and Dioxin-Like Compounds in Residential Soil at: *http://www.atsdr.cdc.gov/toxpro2.html* and *http://www.atsdr.cdc.gov/substances/dioxin/policy*.

DATES: The policy update will be available on or about September 30, 2008.

ADDRESSES: The document will be available on ATSDR's Web site at *http://www.atsdr.cdc.gov/toxpro2.html* as Appendix B of the Toxicological Profile for Chlorinated Dibenzo-p-Dioxins and *http://www.atsdr.cdc.gov/substances/dioxin/policy*.

FOR FURTHER INFORMATION CONTACT: Dr. Tom Sinks, Office of the Director, Agency for Toxic Substances and Disease Registry, Mailstop F–61, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (888) 422–8737.

SUPPLEMENTARY INFORMATION: This update replaces Appendix B in the Toxicological Profile for Chlorinated Dibenzo-p-dioxins (CDDs) (December, 1998). It also supersedes ATSDR's releases of the former policy as contained in the following publications: De Rosa CT et al. 1997; J Clean Technol Environ Toxicol & Occup Med 6(2):117–163, and De Rosa CT et al. 1999; Toxicol Ind Health 15(6):552–576.

The purpose of this update is to ensure that ATSDR health assessors evaluate dioxin levels that exceed the ATSDR established screening level of 0.05 ppb as described in the ATSDR Public Health Assessment Guidance Manual (PHAGM) (ATSDR 2005). When following the PHAGM, assessors should use the 0.05 ppb value as the comparison value. The comparison value is not, however, a threshold for toxicity and should not be used to predict adverse health effects (ATSDR 2005).

This update does not signal a change in ATSDR's scientific assessment on dioxin toxicity or a change in the ATSDR Minimal Risk Level (MRL). Moreover, the update does not change the assessment of risk associated with dioxin soil levels up to 1 ppb—the level U.S. EPA has set as a preliminary remediation goal for residential soils (EPA 1998).

Dated: October 9, 2008.

Ken Rose,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E8–24420 Filed 10–14–08; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–246]

Availability of Final Toxicological Profile for Perchlorates

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final toxicological profile for perchlorates, which completes the nineteenth set prepared by ATSDR. The announcement of seven toxicological profiles for the nineteenth set was published in the **Federal Register** on October 25, 2005 (70 FR 61622).

FOR FURTHER INFORMATION CONTACT: Ms. Olga Dawkins, Division of Toxicology and Environmental, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 1–(800) 232–4636 or (770) 488–3315.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain statutory requirements for ATSDR and the U.S. Environmental Protection Agency (USEPA) regarding hazardous substances most commonly found at facilities on the National Priorities List (NPL). Among the requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority list of hazardous substances. This list identifies 275 hazardous substances that ATSDR and U.S. EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). For previous versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014); November 7, 2003 (68 FR 63098) and December 7, 2005 (70 FR 72840).

The **Federal Register** notice announcing that the draft toxicological profile for perchlorates was available for public review and comment was published on October 25, 2005(70 FR 61622). After the close of the 90-day public comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into the profile. The public comments and other data submitted in response to the **Federal Register** notice

bear the docket control number ATSDR–214. This material is available for public inspection at the Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, 4700 Buford Highway, Building 106, Second Floor, Chamblee, Georgia 30341 between 8 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of the final toxicological profile for perchlorates, which completes the nineteenth set prepared by ATSDR. The following toxicological profile is now available at *http://www.atsdr.cdc.gov/toxpro2.html* or through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. This profile is available for a fee as determined by NTIS.

Toxicological profile	NTIS Order No.	CAS No.
Perchlorates	PB2009–100006.	10034–81–8 007778–81–8 007790–74–7 007601–89–0 007791–03–9

Dated: October 9, 2008.

Ken Rose,

Director, Office of Policy Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E8–24388 Filed 10–14–08; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Department of Health and Human Services, has been renewed for a 2-year period through September 18, 2010.

For information, contact Elaine Baker, Executive Secretary, Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, Department of Health and Human Services, 57 Executive Park Drive, 4th Floor, Mailstop E72, Atlanta, Georgia 30329, telephone (770) 498–0090; fax (770) 498–0011.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–24409 Filed 10–14–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

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: 12:30 p.m.–5 p.m., October 29, 2008. 8:30 a.m.–5 p.m., October 30, 2008.

Place: The Westin San Diego, 400 West Broadway, San Diego, California 92101, Telephone: (619) 338–3613, Fax: (619) 239–4527.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 125 people.

Purpose: The committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the CDC Director regarding new scientific knowledge and technologic developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Matters to be Discussed: Agenda items are subject to change as priorities dictate; however, the current agenda includes

- Discussion on the potential approaches to strengthen existing strategies to achieve the Healthy People 2010 goal of eliminating elevated blood lead levels (BLLs) as a public health problem in the United States by 2010;
- Update on school performance and concurrent BLLs;
- Discussion on study designs related to adverse effects from BLLs <10 μg/dL; and
- Discussion on the development of a prevention-based research agenda.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time for each presenter.

FOR FURTHER INFORMATION CONTACT: Claudine Johnson, Program Operations Assistant, Telephone: (770) 488–3629; Barry Brooks, Administrative Team Leader, Telephone: 770–488–3841; Lead Poisoning Prevention Branch, Division of Environmental Emergency Health Services, National Center for Environmental Health, CDC, 4770 Buford Hwy., NE., Mailstop F60, Atlanta, Georgia 30341.

(The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.)

Dated: October 7, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–24394 Filed 10–14–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC announces the following meeting of the aforementioned committee:

Time and Date: 8 a.m.–3:30 p.m., October 30, 2008.

Place: CDC, Tom Harkin Global Communications Center, Auditorium B, 1600 Clifton Road, NE., Atlanta, GA 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters To Be Discussed: Agenda items will include discussions on budget challenges for Fiscal Year 2009 and beyond;

reports from the Ethics Subcommittee and National Biosurveillance Advisory Subcommittee; progress report on Healthiest Nation; and discussions on globalization. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Brad Perkins, M.D., M.B.A., Executive Officer, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, Georgia 30333. Telephone 404/639–7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 8, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–24499 Filed 10–14–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0523]

FDA–Regulated Products that Contain Bisphenol-A; Request for Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for information.

SUMMARY: The Food and Drug Administration (FDA) is requesting assistance in the identification of types of FDA-regulated products that contain Bisphenol A (BPA), whether as a component of the product or its packaging, and any information relating to the leaching of BPA from the packaging to the product and/or from the product from the product following human administration.

DATES: Submit written or electronic comments and information by December 29, 2008.

ADDRESSES: Submit written comments and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments and information to *http://www.regulations.gov*. Information submitted will be reviewed by the FDA BPA Task Force.

FOR FURTHER INFORMATION CONTACT: Norris Alderson, Office of Science and Health Coordination (HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3340, FAX 301–827–3042, e-mail: norris.alderson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

BPA is a chemical commodity used primarily in the production of polycarbonate plastics and epoxy resins. Such plastics and resins have many applications including as components of packaging for food and drink, and as components of certain medical products and their packaging. Consequently, low levels of residual BPA may be present in such products. On April 14, 2008, the National Toxicology Program (NTP) released a draft brief on BPA for public comment and peer review. The NTP draft brief raises concerns that exposure to BPA could be linked to developmental problems of the endocrine system in infants and young children. The NTP draft brief also contains an exposure estimate to BPA for infants and young children due to leaching of BPA to food from plastic baby bottles and the linings of certain baby food containers. NTP has subsequently released a final report on BPA on September 3, 2008.

In response to the NTP draft brief, Commissioner von Eschenbach has convened an agency-wide task force to facilitate cross-agency review of current research and new information on BPA for all FDA-regulated products. The review will include the NTP brief and all other available information on the exposure of US consumers to BPA from FDA-regulated products.

During the course of this process the task force has been making an inventory of all FDA-regulated products that are known to contain BPA. The task force has already completed a thorough assessment of the potential exposure to BPA due to leaching from food-contact materials and is now interested in additional information on other types of products, specifically medical devices, biological products (including blood, blood products, vaccines, and cell and gene therapies, and drugs.

To ensure that we have current information to support our review of issues related to BPA risks, we are requesting information on the presence and levels of BPA for products with either direct or indirect patient contact. This would include situations where the BPA is a component of the product or its packaging. Information relating to the leaching of BPA from the packaging to the product and/or from the product to patients is also of interest.

At this time, exposure to BPA from the use of the following BPA-related materials provides an initial basis for the agency's query:

- Polycarbonate.
- Polyether sulfone.
- Polycarbonate/siloxane co-polymer.
- Biostable polyurethanes.
- Epoxy resin.

The agency's query also extends to products that contain certain bisphenol acrylic oligomers, such as the following:

- Bisphenol A diglycidylether methacrylate (BIS-GMA).
- Bisphenol A diglycidylether (BADGE).
- Bisphenol A dimethacrylate (BIS-DMA).
- Ethoxylated bisphenol A diacrylates.

II. Information Requested for FDA-Regulated Products

A. Medical Devices and Articles Used in Product Manufacturing

Direct contact devices would include, but not be limited to, those with direct contact with tissue, blood, other fluids, such as cerebrospinal fluid, and skin. Implants, catheters, and most dental devices are additional examples of devices with direct patient contact.

Indirect patient contact or external communicating devices would include, but are not limited to the following:

- Components of blood pathway circuits, (e.g., hemodialysis, apheresis, and cardiopulmonary bypass).
- Respiratory tubing circuits.
- Blood and parenteral solution administration sets.
- Apheresis instrument harnesses including separation bowls and break away closures.
- Hard casing for leukocyte reduction filters.
- Platelet rich plasma preparation devices including tubes for centrifugation of blood.
- Tops for vials or other container closures.
- Large volume containers used in preparation of raw materials for biological products production when lined with epoxy material that contains BPA.
- Materials used for preparation of cell/tissue/gene therapies, including: T-flasks, roller bottles, cell factories, cell culture beads, hard conical tubes, and disposable plastic pipettes.

In submitting your comments, we ask you to provide information with respect to any Class I, Class II, and Class III medical device that has direct or indirect patient contact. Whenever possible, include a description of the analytical method used to develop the submitted data and information.

If the device contains polycarbonate or BPA, we request the submission of data concerning the following:

- The rate and extent of BPA release from devices under clinically relevant extraction conditions.
- What conditions affect the release and leaching of BPA?
- Estimates of patient exposure to BPA from use of the device.

FDA is interested in possible alternatives to BPA.

- Are you aware of available alternatives to the use of BPA in certain medical devices? Provide information concerning the alternative material and any associated risks.

FDA is interested in receiving information concerning devices that have been shown to release BPA, including cardiopulmonary bypass circuits, hemodialysis circuits and certain dental devices. For these devices provide the following information:

- Describe the device type and intended use.
- Describe how the device directly or indirectly contacts a patient.
- Describe whether, and how, the device is used in pediatric patients, and describe the pediatric population by age and gender.
- Identify and attach any study reports related to BPA release from this device type.

B. Human-Use Biological Products and Drugs (Including Protein Drugs)

For products that are: (1) Formulated with BPA-containing components or (2) liquid-based dosage forms [including solutions, suspensions, semisolids (cream, lotion, ointment, foam, gel etc.)] and packaged in plastic containers or in metal canisters with plastic lining or coating (e.g., epoxy) if either the container or the coating have been made by using BPA, please provide the following information:

- NDA/ANDA/BLA number.
- Drug product name, dosage form and route of administration.
- Components and composition of the formulation.
- Container closure system (CCS) and components in direct contact with the formulation.
- Drug Master File number(s) for the CCS, if applicable.
- Levels of BPA found either as an extractable (in model solvents from the CCS) or a leachable (in the formulation) through expiry, if known.
- Identify the analytical method(s) for quantitation of BPA.
- Acceptance criteria either as an extractable or leachable, if established.

Please also provide summary reports from any studies that you may have performed to evaluate the toxicity and to justify the safety of BPA in these products.

C. Other FDA-Regulated Products

We are also soliciting any relevant information on the use of, and potential exposure to, BPA from any other FDA-regulated products, including cosmetics, that have not been discussed in the above paragraphs.

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

Dated: October 3, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–24506 Filed 10–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 18, 2008, from 8 a.m. to 5 p.m., November 19, 2008, from 8 a.m. to 5:30 p.m. and on November 20, 2008, from 8 a.m. to 12 noon.

Location: Holiday Inn/College Park, The Ballroom, 10000 Baltimore Ave., College Park, MD. The hotel telephone number is 301–345–6700.

Contact Person: Janie Kim, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *janie.kim@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138(301–443–0572 in the Washington, DC area), code 3014512530. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 18, 2008, the committee will discuss the justification of the non-inferiority margin for complicated skin and skin structure infections. On November 19, 2008, the committee will discuss: (1) New drug application (NDA) 022–110, telavancin powder for reconstitution and intravenous administration, Theravance, Inc., proposed for the treatment of complicated skin and skin structure infection, and (2) NDA 022–153, oritavancin, Targanta Therapeutics Corp., proposed for the treatment of complicated skin and skin structure infection. On November 20, 2008, the committee will discuss NDA 022–269, iclaprim, Arpida AG, proposed for the treatment of complicated skin and skin structure infection.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 4, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. to 1:15 p.m. on November 18, 2008, between approximately 11:30 a.m. to

11:45 a.m. and 4:15 p.m. to 4:30 p.m. on November 19, 2008, and between approximately 10:15 a.m. to 10:30 a.m. on November 20, 2008. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 24, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 28, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Janie Kim at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 6, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–24354 Filed 10–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 24, 2008, from 8:30 a.m. to 4:30 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel phone number is 301–589–5200.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–6793, FAX: 301–827–6776, e-mail: *nicole.vesely@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512532. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 21–856, ULORIC (febuxostat), Takeda Pharmaceuticals North America, Inc., for the proposed treatment of hyperuricemia in patients with gout.

FDA intends to make background material available to the public no later than 2 business day before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 7, 2008. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 30, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 31, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Nicole Vesely at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C.app. 2).

Dated: October 3, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–24355 Filed 10–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration

(FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 20, 2008, from 8 a.m. to 5:30 p.m.

Location: Gaithersburg Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: James Swink, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4050, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application, sponsored by Biosense Webster, Inc., a Johnson & Johnson Company, for the NaviStar ThermoCool irrigated RF ablation catheter. The device, an open-lumen, irrigated tip, steerable radiofrequency cardiac ablation catheter, is inserted through the venous circulation to the heart, across the intra-atrial septum to the left atrium to ablate cardiac tissue for the purposes of creating lines of block in the atria to eliminate conduction patterns that theoretically generate or allow propagation of paroxysmal atrial fibrillation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 30, 2008. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 22, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 23, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 6, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–24353 Filed 10–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 11, 2008, from 8 a.m. to 5:30 p.m.

Location: Gaithersburg Holiday Inn, Walker/Whetstone Salons, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Michael Bailey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4100, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512524. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for the FC2 Female Condom, sponsored by the Female Health Company. This device is indicated to help prevent HIV/AIDS and unintended pregnancy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee

meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 26, 2008. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m., and between approximately 3:30 p.m. and 4 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 18, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 19, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 240–276–8932, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2)

Dated: October 6, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–24357 Filed 10–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by the Department of Health and Human Services, when that research is also regulated by FDA.

Date and Time: The meeting will be held on Tuesday, November 18, 2008, from 8 a.m. to 5 p.m.

Location: Holiday Inn Gaithersburg, 2 Montgomery Village Rd., Gaithersburg, MD 20877.

Contact Person: Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane, (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, e-mail: *carlos.peña@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On November 18, 2008, the Pediatric Advisory Committee will hear and discuss reports by the agency, as mandated in section 17 of the Best Pharmaceuticals for Children Act (BPCA), on adverse event reports for BETOPTIC S (betaxolol), ALDARA (imiquimod), LAMICTAL (lamotrigine), LEVAQUIN (levofloxacin), SANDOSTATIN (octreotide), ZYPREXA (olanzapine), RISPERDAL (risperidone), LAMISIL (terbinafine), TIMOLOL GFS (timolol), and AMBIEN (zolpidem). The committee will be provided a written followup report on ZYVOX (linezolid), as requested by the committee at the November 16, 2006, Pediatric Advisory Committee meeting. The committee will also be updated on other activities, including the June 9 and 10, 2008, Pediatric Ethics Subcommittee meeting.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 27, 2008. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on November 18, 2008. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 17, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 20, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carlos Peña

at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 7, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–24356 Filed 10–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0038]

Request for Nominations for Voting Members on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Device Good Manufacturing Practice Advisory Committee, certain device panels of the Medical Devices Advisory Committee, the National Mammography Quality Assurance Advisory Committee, and the Technical Electronic Products Radiation Safety Standards Committee in the Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and those that will or may occur through August 31, 2009.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Because scheduled vacancies occur on various dates throughout each year, no cutoff date is established for the receipt of nominations. However, when possible, nominations should be received at least 6 months before the date of scheduled vacancies for each year, as indicated in this notice.

ADDRESSES: All nomination for membership should be sent electronically to *CV@OC.FDA.GOV*, or by mail to Advisory Committee Oversight & Management Staff (HF–4), 5600 Fishers Lane, rm. 15A–12, Rockville, MD 20857. Information about becoming a member on a FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/oc/advisory/default.htm*.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Walker, Center for Devices and Radiological Health (HFZ–17), Food and Drug Administration, 7520 Standish Pl., (MPN1), Rockville, MD 20855, 240–276–8938, e-mail: *Kathleen.Walker@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Vacancies

FDA is requesting nominations of voting members for vacancies listed as follows:

TABLE 1.

Committee/Panel and Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Dental Products Panel of the Medical Devices Advisory Committee—dentists, engineers, and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy	3	Immediately
Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee—experts with broad, cross-cutting scientific, clinical, analytical, or mediation skills	1	Immediately
	1	October 1, 2008
Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee—otologists, neurotologists, audiologists	3	November 1, 2008
Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee—transplant specialists, gastroenterologists, urologists, and nephrologists	3	January 1, 2009
General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee—surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians	2	September 1, 2009
Hematology and Pathology Devices Panel of the Medical Devices Advisory Committee—hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and homeostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive and prognostic biomarkers	2	Immediately
	2	March 1, 2009
Immunology Devices Panel of the Medical Devices Advisory Committee—persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine	1	Immediately
	2	March 1, 2009

TABLE 1.—Continued

Committee/Panel and Expertise Needed	Current & Upcoming Vacancies	Approximate Date Needed
Microbiology Devices Panel of the Medical Devices Advisory Committee—infectious disease clinicians, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, biofilm development; mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists	4	Immediately
Molecular and Clinical Genetics Devices Panel of the Medical Devices Advisory Committee—experts in human genetics and in the clinical management of patients with genetic disorders, e.g., pediatricians, obstetricians, neonatologists; individuals with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology and related statistical training, and clinical molecular genetics testing (e.g., genotyping, array CGH, etc.); individuals with experience in genetics counseling, medical ethics are also desired, and individuals with experience in ancillary fields of study will be considered	3	Immediately
Neurological Devices Panel of the Medical Devices Advisory Committee—neurosurgeons (cerebrovascular and pediatric), neurologists (stroke, pediatric, pain management, and movement disorders), interventional neuroradiologists, psychiatrists, and biostatisticians	2 2	Immediately December 1, 2008
Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee—experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing	3 1	Immediately February 1, 2009
Ophthalmic Devices Panel of the Medical Devices Advisory Committee—ophthalmologists specializing in cataract and refractive surgery and vitreo-retinal surgery, in addition to vision scientists, optometrists, and biostatisticians practiced in ophthalmic clinical trials	3	November 1, 2008
Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee—orthopedic surgeons (joint, spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians	3 2	Immediately September 1, 2009
Radiological Devices Panel of the Medical Devices Advisory Committee—physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging and image analysis	2	February 1, 2009
National Mammography Quality Assurance Advisory Committee—physicians, practitioners, or other health professionals whose clinical practice, research specialization, or professional expertise include a significant focus on mammography	1 3	Immediately February 1, 2009
Device Good Manufacturing Practice Advisory Committee—vacancies include three government representatives, two public representatives, and two health professionals	7	Immediately
Technical Electronic Product Radiation Safety Standards Committee—vacancies include five government representatives, five industry representatives, and five general public representatives	15	Immediately

II. Functions

A. Medical Devices Advisory Committee

The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. The panels engage in a number of activities to fulfill the functions of the Federal Food, Drug, and Cosmetic Act (the act) for device advisory panels. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, performs the following duties: (1) Advises the Commissioner of Food and Drugs (the Commissioner) regarding recommended classification or reclassification of devices into one of three regulatory categories, (2) advises on any possible risks to health associated with the use of devices, (3) advises on formulation of product development protocols, (4) reviews premarket approval applications for medical devices, (5) reviews guidelines and guidance documents, (6) recommends exemption of certain devices from the application of portions of the act, (7) advises on the necessity to ban a device, and (8) responds to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to

the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and agency guidance and policies. The panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or agency decisions or actions.

B. National Mammography Quality Assurance Advisory Committee

The functions of the committee are to advise FDA on the following topics: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; (6) reporting new developments concerning breast imaging, which should be considered in the oversight of mammography facilities; (7) determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; (8) determining whether there will exist a sufficient number of medical physicists after October 1, 1999, and (9) determining the costs and benefits of compliance with these requirements.

C. Device Good Manufacturing Practice Advisory Committee

The functions of the committee are to review proposed regulations regarding good manufacturing practices governing the methods used in, and the facilities and controls used for, manufacture, packaging, storage, installation, and servicing of devices, and to make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines developed to assist the medical device industry in meeting the good manufacturing practice requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from good manufacturing practice regulations.

Section 520 of the act (21 U.S.C. 360(j)), as amended, provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of the interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public. The agency will publish a separate notice announcing the vacancies of two representatives of interests of the device manufacturing industry.

D. Technical Electronic Product Radiation Safety Standards Committee

The function of the committee is to provide advice and consultation on the technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation from such products. The committee may recommend electronic product radiation safety standards for consideration.

Section 534(f) of the act (21 U.S.C. 360kk(f)), as amended by the Safe Medical Devices Act of 1990, provides that the Technical Electronic Product Radiation Safety Standards Committee include five members from governmental agencies, including State or Federal Governments, five members from the affected industries, and five members from the general public, of which at least one shall be a representative of organized labor.

III. Qualifications

A. Panels of the Medical Devices Advisory Committee

Persons nominated for membership on the panels should have adequately diversified experience appropriate to the work of the panel in such fields as clinical and administrative medicine, engineering, biological and physical sciences, statistics, and other related professions. The nature of specialized training and experience necessary to qualify the nominee as an expert suitable for appointment may include experience in medical practice, teaching, and/or research relevant to the field of activity of the panel. The particular needs at this time for each panel are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

B. National Mammography Quality Assurance Advisory Committee

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography and individuals identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise.

The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

C. Device Good Manufacturing Practice Advisory Committee

Persons nominated for membership as a health professional or officer or employee of any Federal, State, or local government should have knowledge of or expertise in any one or more of the following areas: Quality assurance concerning the design, manufacture, and use of medical devices. To be eligible for selection as a representative of the general public, nominees should possess appropriate qualifications to understand and contribute to the committee's work. The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

D. Technical Electronic Product Radiation Safety Standards Committee

Persons nominated should be technically qualified by training and experience in one or more fields of science or engineering applicable to electronic product radiation safety. The particular needs at this time for this committee are listed in section I of this document. The term of office is up to 4 years, depending on the appointment date.

IV. Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory panels or advisory committees. Self-nominations are also accepted. Nominations will include complete curriculum vitae of each nominee, current business address and telephone number. Nominations will specify the advisory panel(s) or advisory committee(s) for which the nominee is recommended. Nominations will include confirmation that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee if selected, and appears to have no conflict of interest that would preclude membership. Potential candidates will be required to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: October 3, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–24358 Filed 10–14–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Reproduction Centers Meeting.

Date: November 12–14, 2008.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Dennis E. Leszczynski, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Rm. 5b01, Bethesda, MD 20892, (301) 435–6884, *leszczyd@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–24498 Filed 10–14–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Tumor Stem Cells in Cancer Biology, Prevention and Therapy (P01).

Date: November 19–20, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott and Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8053, Bethesda, MD 20892, 301–435–1822, *githenss@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI SPORE in Ovarian and Gynecologic Cancers.

Date: February 11–13, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Caron Lyman, PhD, Scientific Review Officer, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd. Room 8119, Bethesda, MD 20892–8328, 301–451–4761, *lymanc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 8, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–24471 Filed 10–14–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Extension, without change, of a currently approved collection, OMB Number 1660–0038, FEMA Form—None.

SUMMARY: The Federal Emergency Management Agency, 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 a continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected from new applicants to the National Flood Insurance Program (NFIP), Write-Your-Own (WYO) Program.

SUPPLEMENTARY INFORMATION: Under the WYO Program, the Federal Emergency Management Agency may enter into arrangements authorized by the National Flood Insurance Act of 1968,

as amended (the Act) with individual private sector insurance companies that are licensed to engage in the business of property insurance. These companies may offer flood insurance coverage to eligible property owners utilizing their customary business practice. To ensure that a company seeking to return or participate in the WYO program is qualified, FEMA requires a one-time submission of information to determine the company's qualifications, as set forth in 44 CFR 62.24.

Collection of Information

Title: Write Your Own (WYO) Company Participation Criteria; New Applicant.

Type of Information Collection: Extension, without change, of a currently approved collection.

OMB Number: 1660–0038.

Form Numbers: None.

Abstract: The Federal Government is a guarantor of flood insurance coverage issued under the WYO arrangement, which allows private insurance to write flood insurance policies. To determine eligibility for participation in the WYO Program, the National Flood Insurance Program requires a one-time application for participation from each new private insurance company seeking entry into the program. FEMA will review each application to determine eligibility to participate in the program.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden Hours: 35 hours.

ANNUAL HOUR BURDEN

Data collection activity/instrument	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (C)	Annual responses (D) = (AxB)	Total annual burden hours (CxD)
WYO Company Participation Criteria; New Applicant	5	1	7	35	35
Total	5	1	7	35	35

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $1,396.00. The estimated annual cost to the Federal Government is $799.00.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before December 15, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301.

FOR FURTHER INFORMATION CONTACT: Contact Dennis Kuhns, Director, Risk Insurance Division, Mitigation Directorate, Federal Emergency Management Agency, (703) 605–0429 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Pamela J. Carcirieri,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–24475 Filed 10–14–08; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; Reinstatement, with change, of a previously approved collection for which approval has expired, OMB Number 1660–0059, FEMA Form 517–1, FEMA Form 512–1.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a reinstatement of an information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning this information collection that allows the National Flood Insurance Program (NFIP) to facilitate the availability of flood insurance to those who have a need to purchase such. The NFIP will collect information from insurance agents who will offer the ability to purchase flood insurance as well as from those interested in purchasing the insurance policies so as to offer referral information on how the coverage may be obtained. If the information collection were not performed, the ability to offer respondents the resources available by the NFIP would be adversely affected.

SUPPLEMENTARY INFORMATION: FEMA administers the National Flood Insurance Program (NFIP) in response to losses due to floods. The Flood Disaster Protection Act of 1973, Congress Findings and Declaration of Purpose, Section 2(a)(6) finds that it is in the public interest for persons already living in flood prone areas to have an opportunity to purchase flood insurance and access to more adequate limits of coverage in order to be indemnified for their losses in the event of future flood disasters. This collection will allow for consumers to be educated about flood insurance coverage and to assist them in obtaining such coverage.

Collection of Information

Title: National Flood Insurance Program Call Center and Agent Referral Enrollment Form.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 1660–0059.

Form Numbers: FEMA Form 517–1, Agent Referral Program Enrollment, FEMA Form 512–1, FEMA Inbound Script.

Abstract: The information collection serves two purposes: (1) allows the NFIP to service requests for flood insurance information or agent referral services from potential purchasers through calls to the toll-free number or by visiting the Web site, and (2) allows insurance agents to enroll in the Agent Referral Program and Agent Co-Op Program. Should the request include an insurance agent referral, the name and business address of insurance agents in the caller's geographic area, who are enrolled in the referral service, are provided.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Annual Burden Hours: 3,943 Hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
Individual or household.	Call to call center and visitors to the Web site/ FEMA Form 512–1.	73,017	1	0.05	3,651	$14.61	$53,338.92
Businesses or other for-profit.	Agent Referral Program Enrollment Form/ FEMA Form 517–1.	8,779	1	0.033	292	28.10	8,140.77
Total	.....	81,796	.....	.....	3,943	.....	61,479.69

Estimated Cost: The estimated annualized cost to respondents based on wage rate categories is $61,479.69. The estimated cost to the Federal Government is $392,201.00.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments must be submitted on or before December 15, 2008.

ADDRESSES: Interested persons should submit written comments to Office of Management, Records Management Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301.

FOR FURTHER INFORMATION CONTACT: Contact Carolyn Goss, Program Analyst, Mitigation, Risk Insurance, Industry and Public Relations Branch, (703) 605–0631 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

Pamela J. Carcirieri,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–24478 Filed 10–14–08; 8:45 am]

BILLING CODE 9110–41–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; New collection, 1660–NW32; FEMA Form 90–152.

SUMMARY: The Federal Emergency Management Agency, 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 a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the FEMA Public Assistance Program Customer Satisfaction Survey results to measure program performance.

Collection of Information

Title: FEMA Public Assistance Program Customer Satisfaction Survey.

OMB Number: 1660–NW32.

Abstract: The purpose of the FEMA Public Assistance Program Customer Satisfaction Survey is to measure program performance against standards for performance and customer service: measure achievement of Government Performance and Results Act (GPRA) objectivities and generally gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness.

Affected Public: Business or other for-profit, Not-for-profit, Farms, Federal Government, State, Local and Tribal Government.

Number of Respondents: 3,280.

Estimated Time per Respondent: .59 hours.

Estimated Total Annual Hour Burden: 1,920 hours.

ANNUAL HOUR BURDEN

Project/activity (survey, form(s), focus group, worksheet, etc.)	Number of respondents (A)	Frequency of responses (B)	Hour burden per response (hours) (C)	Annual responses (D) = (A × B)	Total annual hour burden (hours) (E) = (C × D)
PA Mailed Survey	3,200	1	0.3	3,200	960
PA Focus Groups	80	1	12	80	960
Total	3,280			3,280	1,920

Frequency of Response: Annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Acting Director, Records Management Division, 500 C Street, SW., Washington, DC 20472, Mail Drop Room 301, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Pamela Carcirieri,

Acting Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E8–24502 Filed 10–14–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–57]

Congressional Earmark Grants

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department of Housing and Urban Development's Congressional Grants Division will administer congressionally mandated grants known as earmarks. These projects will be identified in HUD's annual appropriation legislation and accompanying committee reports. These earmarks generally fall into two categories: Economic Development Initiative-Special Project (EDI–SP) and Neighborhood Initiative (N) grants. Grantees are non-profit organizations, Tribal entities and local governments.

DATES: *Comments Due Date:* November 14, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also Lists the Following Information

Title of Proposal: Congressional Earmark Grants.

OMB Approval Number: 2506–NEW.

Form Numbers: SF–424; SFLL; SF–199A; HUD–27053; HUD–27054; SF–269A, SF–424 B, HUD–27056.

Description of the Need for the Information and Its Proposed Use:

The Department of Housing and Urban Development's Congressional Grants Division will administer congressionally mandated grants known as earmarks. These projects will be identified in HUD's annual appropriation legislation and accompanying committee reports. These earmarks generally fall into two categories: Economic Development Initiative-Special Project (EDI–SP) and Neighborhood Initiative (N) grants. Grantees are non-profit organizations, Tribal entities and local governments.

Frequency of Submission: On occasion, Semi-annually, Annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	777		1		5		3,885

Total Estimated Burden Hours: 3,885.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 7, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–24367 Filed 10–14–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5194–N–16]

Notice of Proposed Information Collection for Public Comment; Inspector Candidate Assessment Questionnaire

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 15, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Room 4176, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–5000: telephone: 202–402–8048 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian.L.Deitzer@hud.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Mary Schulhof, Office of Policy, Programs and Legislative Initiatives, PIH, Room 4116, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–5000: telephone: (202) 708–0713, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Inspector Candidate Assessment Questionnaire.

OMB Control Number: 2577–0243.

Description of the need for the information and proposed use: To meet the requirements of the Uniform Physical Condition Standards and the Public Housing Assessment System (PHAS) rules, the Department conducts physical condition inspections of approximately 40,000 multifamily and public housing properties annually. To conduct these inspections, HUD uses contract inspectors that are trained in the Uniform Physical Condition Standards protocol and certified by HUD. Individuals who wish to be trained and certified by HUD are requested to electronically submit the questionnaire via the Internet. The questionnaire provides HUD with basic knowledge of an individual's inspection skills and abilities. No confidential information is being requested.

Agency form number, if applicable: Form HUD–50002.

Members of affected public: Individuals.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 800 individuals that submit one questionnaire. The average number for each individual response is 1 hour, for a total reporting burden of 800 hours.

Status of the proposed information collection: Revised.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 7, 2008.

Bessy Kong,

Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives, Public and Indian Housing.

[FR Doc. E8–24370 Filed 10–14–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5241–N–01]

Notice of Availability of Fleet Alternative Fuel Vehicle Acquisition Report

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice of availability of report.

SUMMARY: Through this notice, HUD is announcing the availability on its website of HUD's Fleet Alternative Fuel Vehicle Acquisition Report for Fiscal Year 2007, which was prepared in accordance with the Energy Policy Act of 1992.

FOR FURTHER INFORMATION CONTACT: Bradley S. Jewitt, Director, Facilities Management Division, Office of Administrative and Management Services, Office of Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–3000; telephone number 202–402–7384 (this is not a toll-free number). Hearing- or speech-impaired individuals may access the voice telephone number listed above by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Energy Policy Act (42 U.S.C. 13201 *et seq.*) (the Act) establishes a comprehensive plan to achieve economic, energy and environmental benefits by promoting the use of alternative fuels. A major goal of the Act is to have the federal government exercise leadership in the use of alternative fuel vehicles. To that end, the Act established alternative fuel vehicle purchasing requirements for the federal fleets of government agencies, and requires federal agencies to report on their compliance with the requirements of the Act. A copy of HUD's Fleet Alternative Fuel Vehicle Report can be obtained via the World Wide Web at: *http://www.hud.gov/offices/adm/reports/admreports.cfm.*

Dated: September 10, 2008.

Keith A. Nelson,

Assistant Secretary for Administration.

[FR Doc. E8–24372 Filed 10–14–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5267–N–01]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Ronald Y. Spraker and Jon L. Gant as members; and Dominique G. Blom as an alternate member of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Earnestine Pruitt, Director, Executive Personnel Management Division, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 708–1381. (This is not a toll-free number.)

Dated: October 7, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–24371 Filed 10–14–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5254–N–01]

Reconsideration of Waivers Granted to and Alternative Requirements for the State of Louisiana's CDBG Disaster Recovery Grant Under the Department of Defense Emergency Supplemental Appropriations To Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of waivers, alternative requirements, and statutory program requirements.

SUMMARY: This notice describes the statutorily required reconsideration of additional waivers and alternative requirements applicable to the Community Development Block Grant (CDBG) disaster recovery grant provided to the State of Louisiana on June 14, 2006, and March 7, 2007, for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina and Rita in 2005. Although the reconsideration period is normally 2 years following grant of the waiver, HUD is reconsidering and altering some waivers early at the state's request.

DATES: *Effective Date*: October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. FAX inquiries may be sent to Ms. Kome at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (the 2006 Act) appropriated $11.5 billion in Community Development Block Grant funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. The State of Louisiana received an allocation and grant of $6,200,000,000 from this appropriation. The 2006 Act authorized the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or use by the recipient of these funds and guarantees, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including requirements concerning lead-based paint), upon a request by the state and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The following waivers, alternative requirements, and reconsidered waivers are in response to written requests from the State of Louisiana.

The Secretary finds that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of 42 U.S.C. 5301 *et seq.*; Title I of the Housing and Community Development Act of 1974, as amended (the 1974 Act); or of 42 U.S.C. 12704 *et seq.*, the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Act, as amended (42 U.S.C. 3535(q)), regulatory waivers must be published in the **Federal Register**. As in the June 14, 2006, notice, the Department is also using this reconsideration notice to provide information about other ways in which the requirements for this grant vary from regular CDBG program rules. The compilation of this information in a single notice has created a helpful resource for Louisiana grant administrators and HUD field staff. Note that waivers and alternative requirements regarding the common application and reporting process for all grantees under this appropriation were published in a prior notice (71 FR 7666, published February 13, 2006, and updated in 73 FR 46312, published August 8, 2008).

Except as described in notices regarding this grant, the statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds.

Descriptions of Changes

This section of the notice briefly describes the basis for each waiver and provides an explanation of related alternative requirements, if additional explanation is necessary. The Description of Changes section also highlights some of the statutory items and alternative requirements described in the sections that follow.

Except as provided in the common waiver notice published August 8, 2008, the waivers, alternative requirements, and statutory changes apply only to the CDBG supplemental disaster recovery funds appropriated in the 2006 Acts and allocated to the State of Louisiana. These actions provide additional flexibility in program design and implementation and note statutory requirements unique to this appropriation.

Eligibility—housing related. The waiver of Section 105(a) of the 1974 Act that allows new housing construction and of Section 105(a)(24), to allow homeownership assistance for families whose income is up to 120 percent of median income and payment of up to 100 percent of a housing down payment is necessary following major disasters in which large numbers of affordable housing units have been damaged or destroyed, as is the case in the disaster eligible under this notice. The broadening of the Section 105(a)(24) waiver, in accordance with the state's request, will allow the state to permit local governments receiving long-term

community recovery funding to implement mixed-use housing recovery programs included in its state-approved long-term recovery plans.

Compensation for disaster-related losses or housing incentives to resettle in Louisiana. The state planned to provide compensation to certain homeowners whose homes were damaged during the covered disasters, if the homeowners agree to meet the stipulations of the published program design. The state has also offered disaster recovery or mitigation housing incentives to promote housing development or resettlement in particular geographic areas. The Department waived the 1974 Act and associated regulations to make these uses of grant funds eligible. Retention of this waiver is critical since the homeowner compensation and incentive program is ongoing.

Eligibility—tourism. The state plans to continue providing disaster recovery grant assistance to support the tourism industry and promote travel to communities in the disaster-impacted areas and has requested an eligibility waiver for such activities. Tourism industry support, such as a national consumer awareness advertising campaign for an area in general, is ineligible for CDBG assistance. However, Congress did make such support eligible, within limits, for the CDBG disaster recovery funds appropriated for recovery of Lower Manhattan following the September 11, 2001, terrorist attacks. HUD understands that such support can be a useful recovery tool in a damaged regional economy that depends on tourism for many of its jobs and tax revenues. Similarly, because the State of Louisiana proposed advertising and marketing activities, rather than direct assistance to tourism-dependent businesses, and because the measures of long-term benefit from the proposed activities must be derived using regression analysis and other indirect means, the original waiver permitted use of no more than $30 million for assistance to the tourism industry. This provision continues unchanged. Further, the assisted activities must be designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita, and, on the state's request and reconsideration, the waiver will now expire 4 years after the date of this notice, after which previously ineligible support for the tourism industry, such as marketing a community as a whole, will again be ineligible for CDBG disaster recovery funding.

Eligibility—buildings for the general conduct of government. The state asked HUD to reconsider and broaden the waiver of the prohibition on funding buildings for the general conduct of government. HUD considered the request and agreed that it is consistent with the overall purposes of the 1974 Act for the state to be able to use its CDBG disaster recovery grant funds to assist projects involving rehabilitation, reconstruction, or construction of buildings for the general conduct of government that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

Eligibility—Research Commercialization and Educational Enhancement. According to the state's Action Plan amendment, the Research Commercialization and Educational Enhancement (RCEE) Program is ''intended to restore the economic impact of scientific and technology research facilities within higher education institutions in the most severely affected areas.'' Activities under this program may include, but are not limited to, stipends for students, related training, purchase of critical equipment, stipends for research professionals, and development of a master strategic plan for meeting the program's intent.

Normally, HUD provides funds to a research institution or a university either to increase its capacity to carry out a CDBG activity such as rehabilitation of housing, to carry out specific research, or to provide training. By contrast, the RCEE program is directed at stabilizing and increasing research and education sector employment and functions themselves. The state has stated that this sector was a significant regional job generator before the covered disasters, that Hurricane Katrina and its aftermath critically damaged many aspects of the research sector, and that the RCEE program is a critical component of the state's long-term economic recovery.

To accomplish its stated intention, the state is funding strategic planning followed by a pilot assistance program for research institutions located in the most impacted areas. At HUD's request, the state has agreed that this planning process will identify critical performance measures for this program, so that all parties involved can assess the usefulness of the RCEE model as part of overall disaster recovery.

The RCEE program design does not break down neatly into CDBG eligibility categories. Portions of the RCEE program are eligible CDBG activities, such as training (public services) and strategic planning. Other portions, especially the stipends and other direct support for retaining key faculty researchers, are outside the usual CDBG realm, although modeled on other government research and endowment grant programs. Program staff will be coordinating the various types of assistance into a coherent whole, moving between supporting eligible and currently ineligible activities.

In the March 6, 2007, notice (72 FR 10014), HUD provided a waiver and alternative requirement to create the eligible activity called Louisiana Research Commercialization and Educational Enhancement to include all activities carried out in accordance with the RCEE program described in the HUD-approved Action Plan, beginning with the amendment introducing this program, accepted January 3, 2007. (The allowable cost provisions of applicable OMB Circulars still apply, as do statutory prohibitions on duplications of benefit with other forms of assistance, such as from federal programs.) The state asked HUD to reconsider this waiver to include an alternative program income requirement. On reconsideration, HUD has also agreed to waive, for the RCEE program only, the definition of ''program income'' to allow the state to define program income for the purposes of the RCEE program, provided that the institution of higher education that is an RCEE CDBG grant subrecipient uses any program revenues generated under the program on activities that benefit the subrecipient and its research mission, as stabilizing this sector and making it one of the drivers of the recovery was a purpose of the RCEE program. Finally, the Department is clarifying that the state may also, for RCEE subrecipients only, provide for alternative policies related to disposition of equipment, so that the RCEE subrecipients are allowed to manage their RCEE-assisted equipment in accordance with their agreements with the state and their own research missions.

Eligibility—Operating Subsidy for Affordable Rental Housing. The state requested and HUD is retaining a waiver to allow a Project-Based Rental Subsidy (PBRA) and assistance to establish operating reserves to encourage developers to rebuild rental and mixed-income housing in the areas that suffered the greatest disaster impact. The subsidy funding, which may be ''piggyback'' funding generally designed to be linked to the use of housing tax credits or funding under another of the rental programs delineated in the state's

HUD approved Action Plan for Disaster Recovery, targets housing for low-income and very low-income families and is limited in amount to the difference between the rents that a project is projected to need to sustain itself, and a specified lower level that can be reasonably afforded by the tenants. With its affordable rental programs, the state proposes to address specific barriers unique to the affordable rental programs outlined by the state's Action Plan (see the Road Home Housing Programs described in the state's Action Plan for Disaster Recovery), such as the lack of affordability in the most heavily damaged areas, the lack of permanent financing for mixed-income rentals, and the need for more risk-tolerant pre-development capital.

In its Road Home rental programs, the state has set a high priority on deep affordability for some rental units and on placing these units within mixed-income communities wherever feasible. The state included new scoring factors in the piggyback tax credit selection process that reflect these priorities and that emphasize long-term viability and reduce operating costs. According to the state, the biggest remaining challenge in providing rental units affordable to very low-income households is the difference between what tenants can afford to pay and the projected cost of operating the units.

The state has researched existing housing models, and concluded that the piggyback model and the small rental and homeless programs described in the Road Home and its amendments are needed to ensure production of affordable units. The state believes it has a critical need for income-targeted rental housing production programs. Although the state has made financing available for rental housing construction, it believes that it will need also to provide operating subsidy options for some projects to ensure they are affordable to very low-income households.

HUD agreed and continues to agree that keeping housing affordable to very low-income households over time may require additional operating subsidy after construction is complete. To allow the state flexible options, HUD will allow CDBG assistance for subsidizing operating costs using PBRA and funding initial operating reserves in the context of the Road Home rental programs as described in the Action Plan. The Department encourages the state to avoid using CDBG for operating subsidies if other financing is available or if the project can reasonably be structured to achieve and maintain its target affordability without the operating subsidy.

HUD recommends that the state establish written requirements for income eligibility, maximum rents, utility allowances, structure quality, and affirmative marketing of projects. HUD also recommends that inflation adjustments set by the state generally not exceed the Section 8 allowable adjustments.

Rental programs of this type can be risky; HUD again reminds the state of the regulatory requirement for annual financial audits of its programs and of the requirement published in **Federal Register** notices 71 FR 7666, 71 FR 73337, and 73 FR 46312, that its entire program be under the purview of an internal auditor.

Eligibility—Homeless Prevention and Rapid Rehousing. The state requested, and HUD is retaining, an eligibility waiver to allow it to implement a Homeless Prevention and Rapid Rehousing Program using funds designated for homeless activities in its Action Plan. The principle of this program model is to minimize the time a family is homeless by providing re-housing and rental assistance, and by linking the family to services designed to help it become stable and self-sufficient. The state's request noted that it modeled its program on the rapid rehousing program approach that the National Alliance to End Homelessness has endorsed as a national best practice. The state also noted that as a consequence of Hurricanes Katrina and Rita, ''Thousands of families today are doubled up with family and friends, facing eviction, in temporary housing conditions affordable only with time limited FEMA rental assistance, or living in FEMA trailer villages—unsure what they are going to do when assistance runs out.''

To carry out this program, the state needs an eligibility waiver for the rental assistance and utility payments that are paid for up to 2 years on behalf of homeless and at-risk households. The program also includes rental and utility deposits and back payments for housing when the state determines that such payments are necessary to help prevent a family from becoming homeless. To the extent the existing CDBG program rules explicitly allow payments for these purposes, the program establishes a shorter time limitation (3 months) and generally discourages or disallows back payments.

The state's program could measurably advance the Department's priority on supporting forward-thinking solutions to help communities that are struggling to house and serve persons and families that are homeless or at risk of homelessness because of the effects of Hurricanes Katrina and Rita. Therefore, this notice, on reconsideration, continues to grant the eligibility waiver as requested.

Documentation of low- and moderate-income benefit and public benefit for certain economic development activities. For some of its economic development programs, the state requested continuation of one waiver to allow it to provide alternate documentation of low- and moderate-income benefit, and another waiver to extend the public benefit standard waiver granted in **Federal Register** notice 71 FR 7666 for the Bridge Loan Program to the economic development activities from Action Plan Amendments 2 and 8, and to Federal Emergency Management Agency (FEMA) public assistance cost share infrastructure projects carried out for the purpose of creating or retaining jobs.

For the national objective documentation for the business assistance activities, the state asked to be able to apply individual salaries or wages per job and the income limits for a household of one, rather than the usual CDBG standard of total household income and the limits-by-total-household size. The state asserted that its proposed documentation would be simpler and quicker for its participating lenders to administer, easier to verify, and would not misrepresent the amount of low- and moderate-income benefit provided.

Further, for the Bridge Loan Program and for infrastructure projects carried out to create or retain jobs or businesses, the state argued for this approach because the state considers these critical recovery activities to need the most streamlined approach to documentation that is consistent with prudent management. On review and following several discussions with state staff, HUD accepted the state's arguments for the activities and programs cited above and granted and is continuing the waiver as requested.

HUD granted this waiver because of the magnitude of the disaster. However, because the validity of this approach has not been verified systematically, HUD may not grant similar waivers in the future. The public benefit provisions set standards for individual economic development activities (such as a single loan to a business) and for economic development activities in the annual aggregate. Currently, public benefit standards limit the amount of CDBG assistance per job retained or created, or the amount of CDBG assistance per low- and moderate-income person to which

goods or services are provided by the activity. Essentially, the public benefit standards are a proxy for all the other possible public benefits provided by an assisted activity. These dollar thresholds were set more than a decade ago and, under disaster recovery conditions (which often require a larger investment to achieve a given result), can be too low and thus impede recovery by limiting the amount of assistance the grantee may provide to a critical activity. The state has made public in its Action Plan the disaster recovery needs each activity is addressing and the public benefits expected.

After consideration, this notice retains the waiver of the public benefit standards for the cited activities, except that the state shall continue to report and maintain documentation on the creation and retention of: (a) Total jobs, (b) number of jobs within certain salary ranges, (c) the average amount of assistance per job and activity or program, and (d) the types of jobs. As a conforming change for the same activities or programs, HUD also waived paragraph (g) of 24 CFR 570.482 to the extent its provisions are related to public benefit.

Documentation of low- and moderate-income household benefit for multi-unit housing projects. Rehabilitation and reconstruction of housing is an eligible CDBG activity. Prior to granting this waiver, HUD granted the state an eligibility waiver to allow new construction of housing. Later, the state requested a related waiver to allow it to fund multi-unit projects and to measure benefit to low- and moderate-income households in such projects in a manner more supportive of mixed-income housing than the structure basis required by 24 CFR 570.483(b)(3). (Under the cited regulation, the general rule is that at least 51 percent of the residents of an assisted structure must be income eligible.)

HUD has reviewed other housing assistance programs that measure benefit differently: by the housing unit. Under the most basic unit-based approach, one or more of the units in a structure must house income-eligible families, but the remainder of the units may be market rate, so long as the proportion of assistance provided compared to the overall project budget is no more than the proportion of units that will be occupied by income-eligible households compared to the number of units in the overall project. In other words, the rule under the usual CDBG structure approach is that a dollar of CDBG assistance to a structure means that 51 percent of the units must meet income requirements. Under the proportional units approach, the number of income-eligible units is proportional to the amount of assistance provided. Based on HUD experience, the second approach is generally more compatible with large-scale development of mixed-income housing.

There is HUD precedent for using some variation on a proportional unit basis in two programs familiar to the state: (1) The CDBG program rule has a built-in exception that allows limited use of the unit basis for multi-unit non-elderly new construction structures with between 20 and 50 percent low- and moderate-income occupancy, and (2) the HOME Investment Partnerships program, HUD's primary housing production program, successfully uses its own variation on the proportional unit approach. After review of the state's Action Plan for Disaster Recovery and learning more about the state's intention to encourage mixed-income housing development, HUD has determined that it is consistent with the overall purposes of the 1974 Act to provide the state with the requested additional flexibility in measuring program benefit.

Therefore, the reconsidered waiver and alternative requirements continue to allow the state a choice. The state may measure benefit within a housing development project (1) according to the existing CDBG requirements, (2) according to the HOME program requirements at 24 CFR 92.205(d), or (3) according to the modified CDBG alternative requirements specified in this notice, which extend the CDBG exception noted above. The state must select and use just one method for each project.

For these purposes, the term ''project'' will have the same meaning as in the HOME program at 24 CFR 92.2. Unlike the HOME program, the CDBG program does not regulate the maximum amount of assistance per unit, require unit and income reviews in the years following initial occupancy, require a specific form of subsidy layering review, or define affordability. The state is reminded, however, that CDBG does require that costs be necessary and reasonable and that the state must develop procedures and documentation to ensure that its housing investments meet this requirement. The state must also meet all civil rights and fair housing requirements.

General planning activities use entitlement presumption. The annual state CDBG program requires that local government grant recipients for planning-only grants must document that the use of funds meets a national objective. In the state CDBG program, these planning grants are typically used for individual project plans. By contrast, planning activities carried out by entitlement communities are more likely to include nonproject-specific plans such as functional land use plans, historic preservation plans, comprehensive plans, development of housing codes, and neighborhood plans related to guiding long-term community development efforts comprising multiple activities funded by multiple sources. In the annual entitlement program, these more general stand-alone planning activities are presumed to meet a national objective under the requirements at 24 CFR 570.208(d)(4). The Department notes that almost all effective CDBG disaster recoveries in the past have relied on some form of area-wide or comprehensive planning activity to guide overall redevelopment independent of the ultimate source of implementation funds. Therefore, the Department waived and is retaining the waiver of the eligibility requirement that CDBG disaster recovery-assisted planning-only grants or state directly administered planning activities that guide recovery in accordance with the appropriations act must comply with the state CDBG program rules at 24 CFR 570.483(b)(5) or (c)(3).

Special economic development job retention activities. Under the public benefit implementing regulations, CDBG grantees are limited to a specified annual amount of CDBG assistance per-job retained or created or the amount of CDBG assistance per low- and moderate-income person to whom goods or services are provided by the assisted activity. Grantees must maintain documentation to show that a job is a retained job or a created job and that the job was made available to or taken by a low- and moderate-income person. This policy and the specified documentation are effective and suitable for relatively small-scale economic development programs of hundreds of thousands of dollars or a few millions of dollars and of tens or hundreds of businesses. The State of Louisiana has undertaken a special economic development portfolio valued at over $200 million to potentially serve thousands of businesses. The state has requested and received regulatory waivers related to public benefit documentation that have helped it to implement its economic development programs' large-scale disaster recovery special economic development activities in a short time frame. HUD is retaining those waivers as several of these programs are ongoing.

Anti-pirating. The limited waiver of the anti-pirating requirements allows the flexibility to provide assistance to a business located in another state or market area within the same state if the business was displaced from a declared area within the state by the disaster and the business wishes to return. This waiver is necessary to allow a grantee affected by a major disaster to rebuild its employment base.

Voluntary acquisition under the Piggyback Program. In connection with the state's Low Income Housing Tax Credit Piggyback Program, various developers obtained options for the acquisition of specific properties to create mixed-income rental housing and workforce housing projects to replace rental housing lost during the hurricanes. The options were obtained on a voluntary basis by developers without the use or threat of eminent domain and prior to the availability of federal funding. However, since these projects will now be receiving CDBG disaster funding assistance, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601 *et seq.*) (the URA) will apply where the property acquisition has not been completed. The state requested and HUD is retaining a waiver related to acquisition requirements under the URA for specific projects with existing options. The state has asked that HUD permit the waivers to help complete the acquisition of property and promote the replacement of housing in a timely and efficient manner. The state believes that these waivers will have little impact on those persons who voluntarily entered into these option agreements prior to the availability of federal funding. Because CDBG funds are federal financial assistance, their use in projects that involve acquisition of property for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the governmentwide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD waived the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

The acquisition requirements of the URA and implementing regulations, so that they do not apply to an arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase of properties for the projects listed in the waiver below. According to the state, the failure to suspend these requirements would impede disaster recovery. This waiver would not affect any lawful occupants of the affected projects, in terms of relocation assistance and payments, and would only waive certain transaction-related requirements vis a vis the project owners.

Uniform Relocation Act Requirements. The state has engaged in voluntary acquisition and optional relocation activities (partly in a form sometimes called ''buyouts'') by using waivers related to acquisition and relocation requirements under the URA and the replacement of housing and relocation assistance provisions under section 104(d) of the 1974 Act. The state asked and received HUD's permission to grant the waivers to help promote the acquisition of property and the replacement of housing in a timely and efficient manner. To date, the state believes that these waivers have had little impact on those persons whose property is voluntarily acquired or who are required to move permanently for a federally assisted project. Because CDBG funds are federal financial assistance, their use in projects that involve acquisition of property necessary for a federally assisted project, or that involve acquisition, demolition, or rehabilitation that force a person to move permanently, are subject to the URA and the governmentwide implementing regulations found at 49 CFR part 24. The URA provides assistance and protections to individuals and businesses affected by federal or federally assisted projects. HUD has waived the following URA requirements to help promote accessibility to suitable decent, safe, and sanitary housing for victims of Hurricanes Katrina and Rita:

- The acquisition requirements of the URA and implementing regulations, so that they do not apply to an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person. According to the state, the failure to suspend these requirements would impede disaster recovery and may result in windfall payments.
- A limited waiver of the URA implementing regulations, to the extent that they require grantees to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. The failure to suspend these one-size-fits-all requirements could impede disaster recovery. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required.
- The URA and implementing regulations, to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months. Failure to grant the waiver would impede disaster recovery whenever TBRA program subsidies are available but when funds for cash relocation assistance are limited. The change provides access to an additional relocation resource option.
- The URA and implementing regulations, to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a ''moving expense and dislocation allowance'' based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301. Failure to suspend this provision would impede disaster recovery by requiring grantees to offer allowances that do not reflect current local labor and transportation costs. Persons displaced from a dwelling remain entitled to choose a payment for actual reasonable moving and related expenses if such persons find that approach preferable to the locally established moving expense and dislocation allowance.

In addition to the URA waivers, HUD waived requirements of section 104(d) of the 1974 Act dealing with one-for-one replacement of low- and moderate-income housing units demolished or converted in connection with a CDBG-assisted development project for housing units damaged by one or more disasters. HUD waived this requirement because it does not take into account the large, sudden changes a major disaster

may cause to the local housing stock, population, or local economy. Further, the requirement does not take into account the threats to public health and safety and to economic revitalization that may be caused by the presence of disaster-damaged structures that are unsuitable for rehabilitation. As it stands, the requirement would impede disaster recovery and discourage grantees from acquiring, converting, or demolishing disaster-damaged housing because of excessive costs that would result from replacing all such units within the specified time frame. HUD also waived the relocation assistance requirements contained in section 104(d) of the 1974 Act to the extent they differ from those of the URA. This change will simplify implementation, while preserving statutory protections for persons displaced by federal projects.

The state has provided the following additional reason for these waivers related to its decision to administer policy for the funds under this notice and for Federal Emergency Management Agency (FEMA) mitigation funding through the same agencies. The statutory requirements of the URA are also applicable to the administration of FEMA assistance, and disparities in rental assistance payments for activities funded by HUD and by FEMA will thus be eliminated. FEMA is subject to the requirements of the URA. Pursuant to this authority, FEMA requires that rental assistance payments be calculated on the basis of the amount necessary to lease or rent comparable housing for a period of 42 months. HUD is also subject to these requirements, but is also covered by alternative relocation provisions authorized under 42 U.S.C. 5304(d)(2)(A)(iii) and (iv) and implementing regulations at 24 CFR 42.350. These alternative relocation benefits, available to low- and moderate-income displacees opting to receive them in certain HUD programs, require the calculation of similar rental assistance payments on the basis of 60 months, rather than 42 months, thereby creating a disparity between the available benefits offered by HUD and FEMA (although not always an actual cash difference). The waiver assures uniform and equitable treatment, by allowing the URA benefits requirements to be the standard for assistance under this notice.

Program Income. A combination of CDBG provisions limits the flexibility available to the state for the use of program income. Prior to 2002, program income earned on disaster recovery grants has usually been program income in accordance with the rules of the regular CDBG program of the applicable state and has lost its disaster grant identity, thus losing use of the waivers and streamlined alternative requirements. Also, the state CDBG program rule and law are designed for a program in which the state distributes all funds rather than carrying out activities directly. The 1974 Act specifically provides for a local government receiving CDBG grants from a state to retain program income if it uses the funds for additional eligible activities under the annual CDBG program. The 1974 Act allows the state to require return of the program income to the state under certain circumstances. This notice waives the existing statute and regulations to give the state, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income for activities in the Action Plan can retain this income and use it for additional disaster recovery activities. In addition, this notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s) to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program. The alternative requirements provide all the necessary conforming changes to the program income regulations.

Timely Distribution of Funds. The state CDBG program regulation regarding timely distribution of funds is at 24 CFR 570.494. This provision is designed to work in the context of an annual program in which almost all grant funds are distributed to units of general local government. Because the state may use disaster recovery grant funds to carry out activities directly, and because Congress expressly allowed this grant to be available until expended, HUD has waived this requirement. However, HUD expects the State of Louisiana to expeditiously obligate and expend all funds, including any recaptured funds or program income, in carrying out activities in a timely manner.

Waivers and Alternative Requirements

1. *Housing-related eligibility waivers.* 42 U.S.C. 5305(a) is waived to the extent necessary to allow homeownership assistance for households with up to 120 percent of area median income and downpayment assistance for up to 100 percent of the down payment (42 U.S.C. 5305(a)(24)(D)), and to allow new housing construction.

2. *Compensation for loss of housing or incentives to resettle in Louisiana.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible incentives to resettle in Louisiana or compensation for loss of housing caused by the disaster and in accordance with the state's approved Action Plan and published program design.

3. *Waiver to permit some activities in support of the tourism industry.* 42 U.S.C. 5305(a) and 24 CFR 570.489(f) are waived to the extent necessary to make eligible use of no more than $30 million for assistance for the tourism industry, including promotion of a community or communities in general, provided that the assisted activities are designed to support tourism to the most impacted and distressed areas related to the effects of Hurricanes Katrina and Rita. This waiver will expire 4 years after the effective date of this notice, after which previously ineligible support for the tourism industry, such as promotion of a community in general, will again be ineligible for CDBG funding.

4. *Buildings for the general conduct of government.* 42 U.S.C. 5305(a) and 24 CFR 507.207(a)(1) are waived to the extent necessary to allow the state to use the grant funds under this notice to assist projects involving rehabilitation, reconstruction, or construction of buildings for the general conduct of government that the state has selected in accordance with the method described in its Action Plan for Disaster Recovery and that the state has determined have substantial value in promoting disaster recovery.

5. *Eligibility—Louisiana Research Commercialization and Educational Enhancement program (RCEE).* Activities carried out in accordance with the HUD-approved Action Plan for the RCEE program approved January 3, 2007, are eligible. Further, for the RCEE program only, the definition of ''program income'' may be defined by the state, provided that the institution of higher education that is an RCEE CDBG grant subrecipient uses any program revenues generated under the program on activities that benefit the RCEE subrecipient's research mission. The state may also, for RCEE activities only, provide for alternative policies related to disposition of equipment, to allow management of RCEE-assisted equipment, in accordance with subrecipient agreements with the state and to the benefit of the assisted research mission.

6. *Waiver to permit operating subsidies for affordable rental housing.*

42 U.S.C. 5305(a) is waived to the extent necessary to make eligible the Road Home project-based rental assistance program included in the state's HUD-approved Action Plan for Disaster Recovery, provided that the assisted activities are designed to ensure that CDBG funds will be invested only to the extent of reasonably anticipated need. Also in conjunction with the Road Home rental program, the grantee may provide assistance to establish an initial operating reserve account for a project receiving other Road Home assistance.

7. *Eligibility of certain activities to support homeless prevention and rapid rehousing programs.* 42 U.S.C. 5305(a) is waived to the extent necessary to make eligible rental assistance and utility payments paid for up to 2 years on behalf of homeless and at-risk households when such assistance or payments are part of a homeless prevention or rapid rehousing program. Eligible assistance in these programs may also include rental and utility deposits and back payments for housing when the State of Louisiana determines that such payments are necessary to help prevent a family from being homeless.

8. *Documentation of low- and moderate-income benefit for multi-unit housing projects.* Under the following circumstances, HUD will consider assistance for a multi-unit housing project involving new construction, acquisition, reconstruction, or rehabilitation to benefit low- and moderate income households:

a.(1) The CDBG assistance defrays the development costs of a housing project providing eligible permanent residential units that, upon completion, will be occupied by low- and moderate-income households; and

(2) If the project is rental, the units occupied by low- and moderate-income households will be leased at affordable rents. The grantee or unit of general local government shall adopt and make public its standards for determining ''affordable rents'' for this purpose; and

(3) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low- and moderate income households; or

b. When CDBG funds defray the development costs of eligible permanent residential units, such funds shall be considered to benefit low- and moderate-income persons if the grantee follows the provisions of 24 CFR 92.205(d); or

c. The requirements of 24 CFR 570.483(b)(3) are met.

d. The state must select and use just one method for each project.

e. The term ''project'' will be defined as in the HOME program at 24 CFR 92.2.

f. If the state applies option (a) or (b) above to a housing project, 24 CFR 570.483(b)(3) is waived for that project.

9. *Planning requirements.* For CDBG disaster recovery-assisted planning activities that will guide recovery in accordance with the 2006 Act, the state CDBG program rules at 24 CFR 570.483(b)(5) and (c)(3) are waived and the presumption at 24 CFR 570.208(d)(4) applies.

10. *National objective documentation for certain economic development activities.* 24 CFR 570.483(b)(4)(i) is waived to allow the grantee to establish low- and moderate-income jobs benefit by documenting for each person employed the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.

11. *Public benefit standards for economic development activities.* For economic development activities designed to create or retain jobs or businesses (including but not limited to BRIDGE, long-term, short-term, infrastructure projects), the public benefit standards at 42 U.S.C. 5305(e)(3) and 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6) are waived, except that the grantee shall report and maintain documentation on the creation and retention of total jobs, the number of jobs within certain salary ranges, the average amount of assistance provided per job by activity or program, and the types of jobs. Paragraph (g) of 24 CFR 570.482 is also waived to the extent its provisions are related to public benefit.

12. *Waiver and modification of the anti-pirating clause to permit assistance to help a business return.* 42 U.S.C. 5305(h) and 24 CFR 570.482 are hereby waived only to allow the grantee to provide assistance under this grant to any business that was operating in the covered disaster area before the incident date of Hurricane Katrina or Rita, as applicable, and has since moved in whole or in part from the affected area to another state or to a labor market area within the same state to continue business.

13. *Waiver of one-for-one replacement of units damaged by disaster.*

a. One-for-one replacement requirements at 42 U.S.C. 5304(d)(2) and (d)(3), and 24 CFR 42.375(a) are waived for low- and moderate-income dwelling units:

(1) Damaged by the disaster,

(2) For which CDBG funds are used for demolition, and

(3) Which are not suitable for rehabilitation.

b. Relocation assistance requirements at 42 U.S.C. 5304(d)(2)(A) and at 24 CFR 42.359 are waived to the extent they differ from those of the URA and its implementing regulations at 49 CFR part 24, following waivers to activities involving buyouts and other activities covered by the URA and related to disaster recovery housing activities assisted by the funds covered by this notice and included in an approved Action Plan.

14. *Uniform Relocation Act requirements.*

a. The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm's length voluntary purchase carried out by a person who does not have the power of eminent domain, in connection with the purchase and occupancy of a principal residence by that person.

b. The requirements at 49 CFR 24.2, 24.402(b)(2), and 24.404 are waived to the extent that they require the state to provide URA financial assistance sufficient to reduce the displaced person's post-displacement rent/utility cost to 30 percent of household income. To the extent that a tenant has been paying rents in excess of 30 percent of household income without demonstrable hardship, rental assistance payments to reduce tenant costs to 30 percent would not be required. Before using this waiver, the state must establish a definition of ''demonstrable hardship.''

c. The requirements of sections 204 and 205 of the URA, and of 49 CFR 24.402(b), are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee's replacement housing financial assistance obligation to a displaced renter by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy (e.g., Section 8 rental voucher or certificate), provided that the renter is also provided referrals to suitable, available rental replacement dwellings where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months.

d. The requirements of section 202(b) of the URA and of 49 CFR 24.302 are waived to the extent that they require a grantee to offer a person displaced from a dwelling unit the option to receive a ''moving expense and dislocation allowance'' based on the current schedule of allowances prepared by the Federal Highway Administration, provided that the grantee establishes

and offers the person a moving expense and dislocation allowance under a schedule of allowances that is reasonable for the jurisdiction and takes into account the number of rooms in the displacement dwelling, whether the person owns and must move the furniture, and, at a minimum, the kinds of expenses described in 49 CFR 24.301.

15. *Voluntary acquisition under the Piggyback program.* The requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an existing option for the arm's length voluntary purchase carried out by a person that does not have the power of eminent domain, in connection with the purchase of property for the projects listed below, so long as the initial option pre-dates December 22, 2006.

LHFA project ID	Project name	Parish	Est. total units
0708FA37	The Meadows	Calcasieu	180
0708FA43	Renoir Acres Estates II	Calcasieu	60
0708FA44	Monet Acres Estates II	Calcasieu	60
0708FA48	Sulphur Retirement Community	Calcasieu	60
0708FA52	Grand Lake Elderly	Cameron	30
0708FA01	Timberlane Apartments	Jefferson	164
0708FA22	Beechgrove Homes	Jefferson	100
0708FA28	Wellswood Manor	Jefferson	84
0708FA49	Oak Villa	Jefferson	80
0708FA30	Lafitte Redevelopment	Orleans	568
0708FA26	St. Bernard I	Orleans	465
0708FA24	BW Cooper I	Orleans	410
0708FA25	CJ Peete III	Orleans	410
0708FA42	Rivergarden CSII	Orleans	310
0708FA57	Canterbury House Apts—New Orleans East	Orleans	276
0708FA47	The Marquis Apartments	Orleans	250
0708FA08	The Villas at Lake Forest	Orleans	230
0708FA11	The Crescent Club	Orleans	226
0708FA41	Walnut Square Apartments	Orleans	209
0708FA13	200 Carondelet	Orleans	190
0708FA10	The Preserve	Orleans	183
0708FA38	Crescent Garden Homes	Orleans	143
0708FA36	Levey Gardens	Orleans	100
0708FA40	Nine 27	Orleans	76
0708FA09	Jefferson Davis Apartments	Orleans	72
0708FA61	Indiana Homes	Orleans	60
0708FA64	Orleans Place	Orleans	60
0708FA27	Classic Construction of New Orleans Venture II	Orleans	56
0708FA29	Constance Lofts	Orleans	47
0708FA23	Delta Oaks Homes	Orleans	40
0708FA63	Old Morrison Homes	Orleans	38
0708FA07	Lakeside Apartments	St. Tammany	250
0708FA06	Tiffany Apartments	Vermilion	250
Totals			5,737

16. *Program income alternative requirement.* 42 U.S.C. 5304(j) and 24 CFR 570.489(e) are waived to the extent that they conflict with the rules stated in the program income alternative requirement below. The following alternative requirement applies instead.

a. Program income.

(1) For the purposes of this subpart, ''program income'' is defined as gross income received by a state, a unit of general local government, a tribe, or a subrecipient of a unit of general local government or of a tribe that was generated from the use of CDBG funds, except as provided in paragraph (a)(2) of this section. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds, or a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or tribe or subrecipient of a state, a tribe, or a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by a state, tribe, or the unit of general local government or a subrecipient of a state, tribe, or unit of general local government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on program income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account;

(ix) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are all or part of the CDBG portion of a public improvement; and

(x) Gross income paid to a state, tribe, or a unit of general local government or a subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) ''Program income'' does not include the following:

(i) The total amount of funds which is less than $25,000 received in a single year that is retained by a unit of general local government, tribe, or subrecipient;

(ii) Amounts generated by activities eligible under section 105(a)(15) of the 1974 Act and carried out by an entity under the authority of section 105(a)(15) of the Act;

(3) The state may permit the unit of general local government or tribe which receives or will receive program income to retain the program income, subject to the requirements of paragraph (a)(3)(ii) of this section, or the state may require the unit of general local government or tribe to pay the program income to the state.

(i) Program income paid to the state. Program income that is paid to the state or received by the state is treated as additional disaster recovery CDBG funds subject to the requirements of this notice and must be used by the state or distributed to units of general local government in accordance with the state's Action Plan for Disaster Recovery. To the maximum extent feasible, program income shall be used or distributed before the state makes additional withdrawals from the United States Treasury, except as provided in paragraph (b) of this section.

(ii) Program income retained by a unit of general local government or tribe.

(A) Program income that is received and retained by the unit of general local government or tribe before closeout of the grant that generated the program income is treated as additional disaster recovery CDBG funds and is subject to the requirements of this notice.

(B) Program income that is received and retained by the unit of general local government or tribe after closeout of the grant that generated the program income, but that is used to continue the disaster recovery activity that generated the program income, is subject to the waivers and alternative requirements of this notice.

(C) All other program income is subject to the requirements of 42 U.S.C. 5304(j) and subpart I of 24 CFR part 570.

(D) The state shall require units of general local government or tribes, to the maximum extent feasible, to disburse program income that is subject to the requirements of this notice before requesting additional funds from the state for activities, except as provided in paragraph (b) of this section.

b. Revolving funds.

(1) The state may establish or permit units of general local government or tribes to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for nonrevolving fund activities.

(2) The state may also establish a revolving fund to distribute funds to units of general local government or tribes to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the state or unit of general local government shall not be directly funded or capitalized with grant funds.

c. Transfer of program income. Notwithstanding other provisions of this notice, the state may transfer program income before closeout of the grant that generated the program income to its own annual CDBG program or to any annual CDBG-funded activities administered by a unit of general local government or tribe within the state.

d. Program income on hand at the state or its subrecipients at the time of grant closeout by HUD and program income received by the state after such grant closeout shall be program income to the most recent annual CDBG program grant of the state.

17. *Waiver of state CDBG requirement for timely distribution of funds.* 24 CFR 570.494 regarding timely distribution of funds is waived.

Notes on Applicable Statutory Requirements

18. *Note on the eligibility of providing funds to Enterprise and Local Initiatives Support Corporation (LISC) for certain purposes.* The appropriations statute provides that the States of Louisiana and Mississippi may each use up to $20,000,000 (with up to $400,000 each for technical assistance) from funds made available under this heading for LISC and the Enterprise Foundation for activities authorized by section 4 of the HUD Demonstration Act of 1993 (Pub. L. 103–120, 42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, and for activities authorized under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104–120, 42 U.S.C. 12805 note), including demolition, site clearance and remediation, and program administration.

19. *Notes on rules applicable to flood buyouts activities.*

a. Payment of pre-flood values for buyouts. HUD disaster recovery entitlement communities, state grant recipients, and tribes have the discretion to pay pre-flood or post-flood values for the acquisition of properties located in a flood way or floodplain. In using CDBG disaster recovery funds for such acquisitions, the grantee must uniformly apply whichever valuation method it chooses.

b. Ownership and maintenance of acquired property. Any property acquired with disaster recovery grants funds being used to match FEMA Section 404 Hazard Mitigation Grant Program funds is subject to section 404(b)(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, which requires that such property be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices. In addition, with minor exceptions, no new structure may be erected on the property and no subsequent application for federal disaster assistance may be made for any purpose. The acquiring entity may want to lease such property to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although federal policy encourages the leasing rather than the sale of such property, the property may be sold. In all cases, a deed restriction or covenant running with the land must require that the property be dedicated and maintained for compatible uses in perpetuity.

c. Future federal assistance to owners remaining in floodplain. (1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) (Section 582) prohibits disaster assistance in certain circumstances. In general, it provides that no federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of

damage to any personal, residential, or commercial property, if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable federal law and the person has subsequently failed to obtain and maintain flood insurance as required under applicable federal law on such property. (Section 582 is self-implementing without regulations.) This means that a grantee may not provide disaster assistance for the above-mentioned repair, replacement, or restoration to a person who has failed to meet this requirement.

(2) Section 582 also implies a responsibility for a grantee that receives CDBG disaster recovery funds or that, under 42 U.S.C. 5321, designates annually appropriated CDBG funds for disaster recovery. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. These requirements are described below.

(3) Duty to notify. In the event of the transfer of any property described in paragraph d below, the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to:

(i) Obtain flood insurance in accordance with applicable federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and

(ii) Maintain flood insurance in accordance with applicable federal law with respect to such property. Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(4) Failure to notify. If a transferor fails to provide notice as described above and, subsequent to the transfer of the property:

(i) The transferee fails to obtain or maintain flood insurance, in accordance with applicable federal law, with respect to the property;

(ii) The property is damaged by a flood disaster; and

(iii) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage. The transferor shall be required to reimburse the federal government in an amount equal to the amount of the federal disaster relief assistance provided with respect to the property.

d. The notification requirements apply to personal, commercial, or residential property for which federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable federal law with respect to such property.

e. The term ''Federal disaster relief assistance'' applies to HUD or other federal assistance for disaster relief in ''flood disaster areas.'' The term ''flood disaster area'' is defined in section 582(d)(2) to include an area receiving a presidential declaration of a major disaster or emergency as a result of flood conditions.

19. *Non-Federal Cost Sharing of Army Corps of Engineers Projects.* Public Law 105–276, Title II, October 21, 1998, 112 Stat. 2478, provided in part that: ''For any fiscal year, of the amounts made available as emergency funds under the heading 'Community Development Block Grants Fund' and notwithstanding any other provision of law, not more than $250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.''

Finding of No Significant Impact

A new Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

Dated: October 6, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–24535 Filed 10–14–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 20, 2008.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on November 20, 2008 at 9 a.m. at Central Mass Regional Planning Commission, located at 2 Washington Square, 2nd floor, Worcester, MA for the following reasons:

1. Approval of Minutes
2. Chairman's Report
3. Executive Director's Report
4. Financial Budget
5. Public Input

It is anticipated that about thirty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Jan H. Reitsma, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Jan H. Reitsma, Executive Director of the Commission at the aforementioned address.

Jan H. Reitsma,

Executive Director, BRVNHCC.

[FR Doc. E8–24359 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0274; 96300–1671–0000–P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for endangered species and marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
185767	Molecular Anthropology Laboratory, Arizona State University.	73 FR 42593; July 22, 2008	September 11, 2008.
Endangered Marine Mammals			
045447	Terrie M. Williams, Center for Ocean Health, University of California.	73 FR 29144; May 20, 2008	September 23, 2008

Dated: September 26, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–24546 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2008–N0270; 71490–1351–0000–L5]

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972 (MMPA) as amended, notice is hereby given that Letters of Authorization to take polar bears and Pacific walruses incidental to oil and gas industry exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Perham at the Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: A Letter of Authorization has been issued to the following companies in accordance with Fish and Wildlife Service Federal Rules and Regulations (see ''Marine Mammals; Incidental Take During Specified Activities'' at 71 FR 43926; August 2, 2006) under section 101(a)(5)(A) of the MMPA and the Fish and Wildlife Service implementing regulations at 50 CFR 18.27(f)(3):

Letters of Authorization for 2007

Company	Activity	Project	Date issued
Kerr-McGee Oil and Gas	Development	Nikaitchuq	Oct 26, 2006.
ConocoPhillips Alaska, Inc	Exploration	Intrepid	Dec 4, 2006.
Anadarko Petroleum Co	Exploration	Jacob's Ladder	Dec 7, 2006.
Savant Alaska, LLC	Exploration	Kupcake #1	Dec 27, 2006.
ConocoPhillips Alaska, Inc	Exploration	Noatak #1, 2, 3	Dec 12, 2006.
ConocoPhillips Alaska, Inc	Exploration	Nugget #1, 2	Dec 12, 2006.
ConocoPhillips Alaska, Inc	Exploration	Cassin #1, 2, 3	Dec 12, 2006.
ConocoPhillips Alaska, Inc	Exploration	Spark Down Dip #9–12	Dec 12, 2006.
ConocoPhillips Alaska, Inc	Exploration	Makua	Dec 15, 2006.
Pioneer Natural Resources Alaska, Inc	Development	Oooguruk Project	Dec 21, 2006.
Brooks Range Petroleum Corp	Exploration	Sak River	Dec 27, 2006.
Ukpeagvik Inupiat Corporation	Development	Cape Simpson Industrial Port.	Jan 31, 2007.
BP Exploration Alaska, Inc	Exploration	Milne Point seismic	Jan 23, 2007
Shell Offshore, Inc	Exploration	Aerial Reconnaissance	Jan 23, 2007.
Shell Offshore, Inc	Exploration	On-ice seismic	Mar 8, 2007.
Shell Offshore, Inc	Exploration	Open water seismic	July 31, 2007
Shell Offshore, Inc	Exploration	Beaufort Drilling Program	Aug 20, 2008.

Letters of Authorization for 2008

Company	Activity	Project	Date issued
Savant Alaska, LLC	Exploration	Kupcake #1	Dec 4, 2007
Pioneer Natural Resources Alaska, Inc	Development	Oooguruk Project	Dec 4, 2007.
Anadarko Petroleum Co	Exploration	Jacob's Ladder	Dec 3, 2007
Anadarko Petroleum Co	Exploration	Gubik, Chandler	Dec 3, 2007.
Brooks Range Petroleum Corp	Exploration	Tofkat	Dec 3, 2007
Brooks Range Petroleum Corp	Exploration	Gwydyr Bay	Dec 3, 2007.
Veritas DGC Land Inc	Exploration	2008 winter seismic	Jan 8, 2008.
Eni U.S. Operating Co, Inc	Development	Nikaitchuq	Feb 22, 2008.
ConocoPhillips Alaska, Inc	Exploration	Char #1	Feb 12, 2008.
ConocoPhillips Alaska, Inc	Exploration	Spark Down Dip 9	Feb 12, 2008.
Shell Offshore, Inc	Exploration	Aerial Reconnaissance Program.	Jan 28, 2008.
BP Exploration Alaska, Inc	Exploration	Liberty Seismic Program	March 6, 2008.
BP Exploration Alaska, Inc	Remediation	Challenge Island #1	April 11, 2008.
PGS Onshore, Inc	Exploration	OBC Seismic	July 10, 2008.
Shell Offshore, Inc	Exploration	Open water seismic	July 10, 2008.
ExxonMobil Production Co	Development	Point Thomson	Aug 19, 2008.

Dated: September 17, 2008.

Thomas O. Melius,

Regional Director.

[FR Doc. E8–24514 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2008–N0271; 71490–1351–0000–L5]

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972 (MMPA) as amended, notice is hereby given that Letters of Authorization to take Pacific walruses and polar bears incidental to oil and gas industry exploration activities in the Chukchi Sea and adjacent western coast of Alaska have been issued.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Perham at the Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: A Letter of Authorization has been issued to the following companies in accordance with Fish and Wildlife Service Federal Rules and Regulations (see ''Marine Mammals; Incidental Take During Specified Activities'' at 73 FR 33212; June 11, 2008) under section 101(a)(5)(A) of the MMPA and the Fish and Wildlife Service implementing regulations at 50 CFR 18.27(f)(3):

Letters of Authorization for 2008

Company	Activity	Location	Date issued
Shell Offshore, Inc	Exploration	Open water seismic	July 7, 2008.
ASRC Energy Services	Exploration	Marine Survey Program	July 15, 2008.
ConocoPhillips Alaska, Inc	Exploration	Marine Survey Program	July 22, 2008.

Dated: September 17, 2008.

Thomas O. Melius,

Regional Director.

[FR Doc. E8–24517 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sporting Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: This notice announces a public teleconference of the Sporting Conservation Council (Council).

DATES: We will hold the teleconference on Tuesday, October 28, 2008, 1–2:30 p.m. (Eastern time). If you wish to listen to the teleconference proceedings, submit written material for the Council to consider, or give a 2-minute presentation during the teleconference, notify Phyllis Seitts by Monday, October 20, 2008. If you wish to submit a written statement for Council consideration during the teleconference, it must be received no later than October 23, 2008. See instructions under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Phyllis T. Seitts, 9828 North 31st Avenue, Phoenix, AZ 85051–2517; 602–906–5603 (phone); or *Twinkle_Thompson-Seitts@blm.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The Secretary of the Interior established the Council in February 2006 (71 FR 11220, March 6, 2006). The Council's mission is to provide advice and guidance to the Federal Government through the Department of the Interior on how to increase public awareness of: (1) The importance of wildlife resources, (2) the social and economic benefits of recreational hunting, and (3) wildlife

conservation efforts that benefit recreational hunting and wildlife resources.

The Secretary of the Interior and the Secretary of Agriculture signed an amended charter for the Council in June 2006 and July 2006, respectively. The revised charter states that the Council will provide advice and guidance to the Federal Government through the Department of the Interior and the Department of Agriculture.

The Council will convene to receive updates on the revised draft North American Model Technical White Paper, on the Preface and Conclusion of the collection of the Technical White Papers, and on the synthesis of breakout session comments from the White House Conference on North American Wildlife Policy held in Reno, Nevada, on October 1–3, 2008.

Procedures for Public Input

Format Requirement for Oral and Written Comments

Whether you wish to comment orally or in written form, you must provide written copies of your comments. All written statements must be supplied to the Council's Designated Federal Officer in both of the following formats:

- One hard copy with original signature, and
- One electronic copy via e-mail (acceptable file format: MS Word, MS Powerpoint, or WordPerfect).

Giving a 2-Minute Oral Presentation

Individuals or groups may request to give an oral presentation during the Council teleconference. Oral presentations will be limited to 2 minutes per speaker, with no more than half an hour total for all speakers. Interested parties must contact Phyllis Seitts, Council Designated Federal Officer, in writing (preferably via e-mail; see **FOR FURTHER INFORMATION CONTACT**), by Monday, October 20, 2008, to be placed on the public speaker list for this teleconference. In addition, if you are selected to make a 2-minute presentation, you must provide hard and electronic copies of your presentation to the Council Designated Federal Officer by Thursday, October 23, 2008. Additional live questions from the public will not be considered during the teleconference.

Submitting Written Information for the Council To Consider

Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council. Interested members of the public may submit relevant written information for the Council to consider during the public teleconference. We must receive all written statements by Thursday, October 23, 2008, so that we can make the information available to the Council for their consideration prior to the teleconference.

Dated: October 8, 2008.

Phyllis T. Seitts,

Designated Federal Officer, Sporting Conservation Council.

[FR Doc. E8–24466 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0275; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 14, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: National Institutes of Health, National Cancer Institute, Frederick, MD, PRT–185986

The applicant requests a permit to import biological samples as well as salvaged specimens from wild, captive-held, and/or captive-born Andean condors (*Vultur gryphus*) collected worldwide, for the purpose of scientific research. No animals would be intentionally killed for the purpose of collecting specimens. Any invasively collected samples would only be collected by trained personnel. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Jeffrey D. Willis, Riverview, FL, PRT–193938

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Edward L. Mabry, Aiken, SC, PRT–194016

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gregory S. Williamson, Cresson, TX, PRT–195419

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Thomas E. Freestone, Safford, AZ, PRT–194655

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Arno W. Weiss, Jr., St. Charles, MI, PRT–191093

The applicant requests a permit to import the sport-hunted trophy of one male scimitar-horned oryx (*Oryx dammah*) culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Dated: September 26, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–24544 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0264; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and marine mammals.

DATES: Written data, comments or requests must be received by November 14, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703–358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: North Carolina Zoological Park, Asheboro, NC, PRT–179585.

The applicant requests a permit to export biological samples from captive-held/captive-born specimens of western gorilla (*Gorilla gorilla*) collected in the course of normal veterinary care to the Max Planck Institute for Evolutionary Anthropology, Germany for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Gibbon Conservation Center, Santa Clarita, CA, PRT–194502.

The applicant requests a permit to import two male and three female captive-held eastern hoolock gibbons (*Hoolock leuconedys*) from the Yangon Zoological Gardens, Myanmar for the purpose of enhancement of the survival of the species through captive breeding.

Applicant: Gibbon Conservation Center, Santa Clarita, CA, PRT–194504.

The applicant requests a permit to import one male captive-born northern white-cheeked gibbon (*Nomascus leucogenys*) from the Parc Zoologique de Cleres, France for the purpose of enhancement of the survival of the species through captive breeding.

Applicant: ZOOZ, c/o Glenn Donnelly, Weedsport, NY, PRT–178258.

The applicant requests a permit to export one female captive-born Amur leopard (*Panthera pardus orientalis*) to ZOOZ, Ontario, Canada for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

Applicant: ZOOZ, c/o Glenn Donnelly, Weedsport, NY, PRT–188848.

The applicant requests a permit to export one male captive-born white tiger (*Panthera tigris*) to ZOOZ, Ontario, Canada for the purpose of enhancement of the survival of the species through conservation education and captive breeding.

Applicant: Duke University Lemur Center, Durham, NC, PRT–679043.

The applicant requests renewal of their permit to take and sell in interstate and foreign commerce, export, or re-export blood and tissue, whole cadavers, and parts from species in the families Lemuridae, Indriidae, Cheirogaleidae, Daubentoniidae, Tarsiidae, and Lorisidae for the purpose of enhancement of the survival of the species and scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: Hugh D. Wabner, Dallas, TX, PRT–194316.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Dianne Peden, Lubbock, TX, PRT–194674.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James E. Smith, Lakeland, FL, PRT–194643.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: John L. Pouleson, Downers Grove, IL, PRT–194630.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals. The application was submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Wildlife Trust, Inc., St. Petersburg, FL, PRT–107933.

The applicant requests an amendment to the permit to take West Indian manatees (*Trichechus manatus*) to expand the geographic area to include all of the waters and holding facilities within the southeastern United States for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of the time on their five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: September 19, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–24547 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0259; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by November 14, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Lincoln Park Zoological Society, Chicago, IL, PRT–194444.

The applicant requests a permit to export two captive-born radiated tortoises (*Geochelone radiata*) to the Biodome de Montreal, Quebec, Canada for the purpose of enhancement of the species through conservation education.

Applicant: Los Angeles Zoo, Los Angeles, CA, PRT–189849.

The applicant requests a permit to import two male and six female captive-born yellow-footed rock wallaby (*Petrogale xanthopus*) from the Monarto Zoo, Monarto, Australia and Adelaide Zoo, Adelaide, Australia, for the purpose of enhancement of the survival of the species.

Applicant: Barry D. Basiliere, Long Beach, CA, PRT–191580.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Julius W. Kolar, Guy, TX, PRT–191581.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Glenn M. Smith, Valley City, OH, PRT–194286.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jon R. Stephens, Columbus, TX, PRT–194086.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kirt O. Fredericks, Spangle, WA, PRT–194319.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Feld Entertainment, Inc., Vienna, VA, PRT–191078, 191079, 191080, 191081, 191082, and 191083.

The applicant requests permits to export, re-export, and re-import two male and four female captive-born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 191078, Taurus; 191079, Fiona; 191080, Spirit; 191081, Cia; 191082, Mikala; 191083, Mohan. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Dated: September 12, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–24548 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2008–N0254; 96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with marine mammals.

DATES: Written data, comments or requests must be received by November 14, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/558–7725; or via e-mail at *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these

applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

The following applicants request permits to import polar bears (*Ursus maritimus*) taken from the Gulf of Boothia polar bear population in Canada as sport hunted trophies for the purpose of enhancement of the survival of the species under section 104(c)(4)(A) of the MMPA because these specimens would not be eligible for importation under 104(c)(5)(A). These specimens were taken prior to the date when the Endangered Species Act prohibitions would apply.

Applicant: Dennis H. Dunn, Kirkland, WA, PRT–189427.

Applicant: Keith C. Halstead, Greenville, SC, PRT–189429.

Applicant: Keith J. Atcheson, Butte, MT, PRT–189430.

Applicant: Kevin J. Wieczorek, Chesterfield, MI, PRT–189431.

Applicant: Marcus C. Hansen, Chester Springs, PA, PRT–189432.

Applicant: Ben A. Hamel, Petoskey, MI, PRT–189434.

Applicant: Aaron R. Neilson, Royse City, TX, PRT–191814.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: September 5, 2008.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E8–24550 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–11265, AA–9807, AA–9515, AA–9804, AA–9742, AA–9891, AA–9887, AA–9672, AA–10191, AA–11366, AA–9650, AA–9649, AA–10281, AA–10194, AA–9679; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation for lands located in the vicinity of Newtok and Chefornak, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until November 14, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Judy A. Kelley,

Land Law Examiner, Resolution Branch (962).

[FR Doc. E8–24389 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO 130 2009 001]

Notice of Intent To Prepare a Resource Management Plan (RMP) and Associated Environmental Impact Statement (EIS) and Initiate the Public Scoping Process

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Grand Junction Field Office (GJFO), Colorado, is initiating a planning effort to prepare the Grand Junction RMP and associated EIS. The RMP will replace the existing 1987 Resource Management Plan.

DATES: The scoping comment period will commence with the publication of this notice and will end on January 9, 2009. However, collaboration with the public will continue throughout the planning process. Public meetings will be announced through the local news media, newsletters, and a BLM Web site at least 15 days prior to the event. Comments on issues and planning criteria should be received on or before the end of the scoping period at the address listed below.

ADDRESSES: Written comments should be sent to the Grand Junction Field Office, Bureau of Land Management, 2815 H Road, Grand Junction, CO 81506 or via fax at (970) 244–3083. E-mail comments may be set to *GJFO_mail@blm.gov*. Comments, including names and addresses of respondents, will be available for public review at the BLM GJFO, during regular business hours 7:30 a.m.–4:30 p.m., Monday–Friday, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list; contact Matt Anderson, Project Manager, Telephone (970) 244–3027. Project documents may be reviewed on BLM's Grand Junction's Field Office Web site at *http://www.blm.gov* (select Grand Junction on the interactive map).

SUPPLEMENTARY INFORMATION: The purpose of the public scoping process is to identify issues that should be considered in the RMP/EIS and to initiate public participation in the planning process. BLM personnel will also be present at scoping meetings to explain the planning process and other requirements for preparing the RMP/EIS. The planning area includes lands within the BLM GJFO administrative boundary. The GJFO RMP decision area encompasses about 1.2 million acres of public lands, which are located within Mesa, Garfield, Montrose, and Delta Counties, Colorado. The decision area includes public lands administered by the BLM GJFO, and does not include

private lands, state lands, tribal trust lands, federal lands not administered by the BLM, lands located within the planning area of the RMP for the McInnis Canyons National Conservation Area and associated Wilderness Area.

The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA) and associated Council of Environmental Quality Regulations 40 CFR part 1500. The plan also fulfills requirements of the Federal Land Policy and Management Act (FLPMA: 43 U.S.C. 1711), applicable planning regulations at 43 CFR part 1600, and BLM management policies.

Parties interested in leasing and development of Federal coal in the planning area should provide coal resource data for their area(s) of interest. Specifically, information is requested on the location, quality, and quantity of Federal coal with development potential, and on surface resource values related to the 20 coal unsuitability criteria described in 43 CFR part 3461. This information will be used for any necessary updating of coal screening determination (43 CFR 3420.1–4) in the area and in the environmental analysis. In addition to coal resource data, the BLM seeks resource information and data for other public land values (e.g., air quality, cultural and historic resources, fire/fuels, fisheries, forestry, lands and realty, non-energy minerals and geology, oil and gas (including coalbed methane), paleontology, rangeland management, recreation, soil, water, and wildlife) in the planning area. The purpose of this request is to assure that the planning effort has sufficient information and data to consider a reasonable range of resource uses, management options, and alternatives for the public lands.

Proprietary data marked as confidential may be submitted in response to this call for coal and other resource information. Please submit all proprietary information submissions to the address listed above. The BLM will treat submissions marked as ''Confidential'' in accordance with the laws and regulations governing the confidentiality of such information.

The BLM GJFO will work collaboratively with interested parties to identify the management actions and decisions that are best suited to local, regional, and national needs and concerns of the public, subject to planning criteria to be developed to guide the plan. Preliminary issues and management concerns have been identified by the BLM, other agencies, and meetings with individuals and user groups. The major issue themes to be addressed in the RMP effort include:

- Management and protection of public land resources while allowing for multiple uses.
- Management of riparian areas and water quality concerns.
- Recreation/visitor use and safety management.
- Travel management, including Off Highway Vehicle.
- Management of areas with special values.
- Energy and minerals management.
- Management of wildlife habitat including protection of sensitive species habitat.
- Community expansion and urban interface.
- Land Tenure Adjustments.

After gathering public comments, issues will be placed in one of three categories.

1. Issues to be resolved by the plan;
2. Issues resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

Rationale will be provided in the plan for each issue placed in category two or three. In addition to these major issues, a number of management questions and concerns will be addressed in the plan. The public is encouraged to help identify these questions and concerns during the scoping phase. An interdisciplinary approach will be used to develop the plan in order to consider the variety of issues and concerns identified. Disciplines involved in the planning process will include specialists with expertise in rangeland management, minerals and geology, outdoor recreation, archaeology, paleontology, wildlife, fisheries, wild horse, weeds, lands and realty, hydrology, soils, engineering, fire, wilderness, hazardous materials, and social and economic. The BLM has identified some preliminary planning criteria to guide the development of the plan. The following planning criteria have been proposed to guide the development of the plan, to avoid unnecessary data collection and analyses, and to ensure the plan is tailored to issues. Other criteria may be identified during the public scoping process. Proposed planning criteria include the following:

- The plan will comply with all applicable laws, regulations and current policies.
- Broad-based public participation will be an integral part of the planning and EIS process.
- The plan will recognize valid existing rights.
- Areas with special designations as appropriate.

Dated: October, 2008.

Raul Morales,

Associate Field Manager, Grand Junction Field Office.

[FR Doc. E8–24374 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–07–5101–ER–F344; N–78091]

Notice of Availability of the Final Environmental Impact Statement for a Proposed Coal-Fired Electric Power Generating Plant in Eastern White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, a Final Environmental Impact Statement (Final EIS) has been prepared by the Bureau of Land Management (BLM), Ely Field Office for the White Pine Energy Station (WPES) and is now available. This document evaluates the environmental effects of constructing a coal-fired electric power generating plant (up to 1,600-megawatts) and associated features on public lands in White Pine County, Nevada.

DATES: The Final EIS will be available for review until November 3, 2008, which is 30 days following the date the EPA published their notice in the **Federal Register**, [73 FR 57620].

ADDRESSES: The Final EIS and associated documents will be available for review in hard copy and on compact disk at the following locations:

—University of Nevada-Reno, Getchell Library, Government Publication Dept., Reno, NV 89507
—Washoe County Library, 301 South Center Street, Reno, NV 89501
—White Pine County Library, 950 Campton Street, Ely, NV 89301
—Clark County Library, 1401 E. Flamingo Rd., Las Vegas, NV 89119

A limited number of copies of the document will be available at the following BLM offices:

—Elko Field Office, 3900 Idaho Street, Elko, NV 89801
—Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701
—Ely Field Office, 702 North Industrial Way, Ely, NV 89301–9408
—Nevada State Office, 1340 Financial Boulevard, Reno, NV 89502–7147
—Washington Office of Public Affairs, 18th and C Street, NW., Washington, DC 20240

The entire document can also be reviewed or downloaded at the Ely BLM Field Office Web site *http://www.blm.gov/nv/st/en/fo/ely_field_office*.

FOR FURTHER INFORMATION CONTACT: Doris Metcalf, 775–289–1852.

SUPPLEMENTARY INFORMATION: The Final EIS addresses alternatives to resolve the following major issues: ground water, air quality, visual resources, biological resources, and socioeconomic effects.

The Proposed Action includes the following actions: coal-fired power plant site right-of-way (ROW), transmission line alignment and substations ROW, well field and water line ROW, railroad spur ROW, and access roads ROW. The Proposed Action includes the following project actions and features: issue ROWs for White Pine Energy Station construction and operation and subsequently arrange for the sale of the power plant site to White Pine Energy Associates; construct, operate, and maintain an up to 1,600-megawatt (maximum) coal-fired electric power generating plant using hybrid cooling systems with an expected commercial life of 50 years or longer; develop a well field in the Steptoe Valley Hydrographic Basin to meet the water needs of the power plant; construct a new rail spur from the Nevada Northern Railway to the power plant site to supply coal; develop the linear infrastructure necessary to connect the power plant to the new water source, to existing electric transmission lines serving the region, and to provide site access; and implement a seeding project to enhance the grazing and wildlife value of 700 to 900 acres.

The BLM issued the *Notice of Availability of the Draft Environmental Impact Statement for a Proposed Coal-Fired Electric Power Generating Plant in Eastern White Pine County and Notice of Public Meetings; Nevada,* in the **Federal Register** on April 20, 2007, with a 60-day public comment period. The BLM held two public meetings, one in Ely, Nevada and one in Reno, Nevada. At the request of environmental group representatives, BLM held an informational meeting in Las Vegas, Nevada. In preparing the Final EIS BLM responded to more than 514 comments received during the Draft EIS public review period. Comment responses and resultant changes in the impact analysis are documented in the Final EIS. The BLM will prepare a Record of Decision for the EIS 30 days following EPA's publication of this notice in the **Federal Register**.

John F. Ruhs,

Field Manager.

[FR Doc. E8–24508 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–660–1430–ET; CACA 49558]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw 550 acres of public land from surface entry and mining for reclamation purposes on behalf of the Bureau of Reclamation. This notice segregates the lands for up to 2 years from surface entry and mining while various studies and analyses are made to support a final decision on the withdrawal application. The lands will remain open to mineral and geothermal leasing and mineral material sales.

DATES: Comments should be received on or before January 13, 2009.

ADDRESSES: Comments and requests for a public meeting should be sent to Joe Liebhauser, Director, Resources Management Office, Lower Colorado Regional Office, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89006–1470.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Sundberg, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, 702–293–8176.

SUPPLEMENTARY INFORMATION: The applicant is the Bureau of Reclamation at the address stated above and its petition/application requests the Secretary of the Interior to withdraw, subject to valid existing rights, the following described public land from settlement, sale, location or entry under the general land laws, including the United States mining laws, but not the mineral leasing laws:

San Bernardino Meridian

T. 7 S., R. 8 E.,
Sec. 32, W½NW¼NE¼, SW¼NE¼, SW¼SE¼NE¼, W½, and SE¼.

The area described contains 550 acres in Riverside County.

The Bureau of Reclamation's petition/application has been approved by the Assistant Secretary, Land and Minerals Management, therefore, it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The land would be withdrawn to protect both existing and planned Federal facilities, structures, and improvements that were or will be constructed and utilized on behalf of the All-American Canal Project, pursuant to the Boulder Canyon Project Act of December 21, 1928, as amended (43 U.S.C. 617).

The use of a right-of-way, interagency agreement, cooperative agreement, or surface management under 43 CFR Part 3809 regulations would not adequately constrain non-discretionary uses that could irrevocably affect the use of the land for reclamation purposes.

There are no suitable alternative sites since the land described herein contains the existing and planned facilities, structures, and improvements.

Until January 13, 2009, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to Joe Liebhauser, at the Bureau of Reclamation address above.

Comments, including names and street addresses for respondents, will be available for public review at Bureau of Land Management's (BLM) California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request no later than January 13, 2009. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from October 15, 2008, the Federal land and minerals will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

During the segregative period, BLM may, after consulting with the Bureau of Reclamation, allow uses of a temporary nature that are compatible with the reclamation purposes for which the land is being withdrawn.

Authority: 43 CFR 2310.3–1.

Dated: October 8, 2008.

Robert M. Doyel,

Chief, Branch of Lands Management (CA–930).

[FR Doc. E8–24350 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1430–ES; N–82841; 8–08807; TAS: 14X1109]

Notice of Realty Action: Classification and Conveyance for Recreation and Public Purposes of Public Lands in Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification and conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 80 acres of public land in Lander County, Nevada. Lander County proposes to use the land for a waste water treatment facility.

DATES: Interested parties may submit written comments regarding the proposed conveyance or classification of the lands until December 1, 2008.

ADDRESSES: Mail written comments to the BLM Manager, Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lane, (775) 635–4000.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Lander County, Nevada, has been examined and found suitable for classification and conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Mount Diablo Meridian, Nevada

T. 19 N., R. 43 E.,
Sec. 15, E½NE¼

The area described contains 80 acres, more or less.

In accordance with the R&PP Act, Lander County filed an application for the above described 80 acres of public land to be developed as a waste water treatment facility. Additional detailed information pertaining to this application, plan of development, and site plans is in case file N–82841 located in the BLM Battle Mountain District Office.

The land is not needed for any Federal purpose. The conveyance is consistent with the Shoshone/Eureka Resource Management Plan, dated February 26, 1986, and would be in the public interest. The conveyance, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The conveyance will also be subject to: Valid existing rights.

On publication of this notice in the **Federal Register** the land described above will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws.

Interested parties may submit comments involving the suitability of the land for a waste water treatment facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Only written comments submitted by postal service or overnight mail to the Field Manager, Mount Lewis Field Office, will be considered properly filed. Electronic mail, facsimile, or telephone comments will not be considered properly filed. Comments, including names and addresses of respondents, will be available for public review. Before including your address, telephone number, *e-mail* address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments will be reviewed by the BLM Nevada State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective on December 15, 2008. The lands will not be available for conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Dated: September 30, 2008.

Stephen C. Drummond,

Acting Field Manager, Mount Lewis Field Office.

[FR Doc. E8–24385 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–ES; NMNM 119204]

Recreation and Public Purposes (R&PP) Act Classification; Doña Ana County, NM.

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action.

SUMMARY: The BLM has examined and found suitable approximately 10 acres of public land in Doña Ana County, New Mexico for classification for lease

or subsequent conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (44 Stat. 741, as amended; 43 U.S.C. 869 *et seq.*) and section 212 of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended. Doña Ana County proposes to use the land for the proposed Rodey Community Resource Center in Rodey, New Mexico.

DATE: Interested parties may submit written comments regarding the proposed lease/conveyance or classification of the lands on or before December 1, 2008.

ADDRESSES: Written comments concerning this Notice should be addressed to: District Manager, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Frances Martinez, Realty Specialist, at the above address or at (575) 525–4385.

SUPPLEMENTARY INFORMATION: The following public land in Doña Ana County, New Mexico has been examined and found suitable for classification for lease or subsequent conveyance to Doña Ana County under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Also, in accordance with Section 7 of the Taylor Grazing Act (43 U.S.C. 317f), the following described land has been examined and found suitable for classification as a non-profit, public purpose—specifically, a site for a proposed community center and park operated and managed by Doña Ana County, New Mexico. The land is hereby classified accordingly. The parcel of public land, located south of Rodey, New Mexico is described as follows:

New Mexico Principal Meridian:

T. 19 S., R. 3 W.
Sec. 15, NW¼SE¼SW¼.

The area described contains 10 acres, more or less, in Doña Ana County, New Mexico.

Doña Ana County proposes to develop the land to construct a proposed community center and park for the purpose of meeting recreational needs for the community of Rodey. The proposed project will include a parking lot, a community center, concession stand with restrooms and recreational facilities. The recreational facilities include a baseball field, soccer field, basketball and volleyball courts, a playground and a walking path connecting all the facilities, including a gazebo with grills and picnic areas. Conveying title to the affected public land is consistent with current BLM land use planning.

The lease or conveyance, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the R&PP Act and to all applicable regulations of the Secretary of the Interior.
2. A right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).
3. Lease and/or patent of the public land shall be subject to valid existing rights. Subject to limitations prescribed by law and regulation, prior to patent issuance, a holder of any right-of-way within the lease area may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.
4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
5. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal land and interests therein.

Detailed information concerning this proposed project, including, but not limited to documentation relating to compliance with applicable environmental and cultural resource laws, is available for review at the address above.

On October 15, 2008, the land described will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act and leasing under the mineral leasing laws.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the proposed community center and park. Comments on the classification are restricted to whether the land is physically suited for the proposal, where the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Additional Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for community centers and parks.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Any adverse comments will be reviewed by the BLM State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective on December 15, 2008.

(Authority: 43 CFR 2741.5)

Bill Childress,
District Manager, Las Cruces.

[FR Doc. E8–24543 Filed 10–14–08; 8:45 am]
BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–5874–EU; N–84039; 8–08807; TAS: 14X5260]

Notice of Realty Action: Segregation of Public Land in Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Two parcels of public land of approximately 878.34 acres in Lander County, Nevada are being considered for sale under the provisions of Section 203 of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value. This notice is to segregate the lands being considered for sale for a period of up to two years.

DATES: Interested parties may submit written comments to the Bureau of Land Management (BLM) regarding the segregation of these lands until December 1, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Battle Mountain District Office, Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lane, (775) 635–4168.

SUPPLEMENTARY INFORMATION: The following public lands in Lander County, Nevada, are being considered for sale under the authority of Section 203 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1713):

Mount Diablo Meridian, Nevada

T. 17 N., R. 41 E.,
Sec. 13, W½.
T. 17 N., R. 42 E.,
Sec. 18, Lots 2 to 4, inclusive, E½, SE¼NW¼, E½SW¼.

The area described contains 878.34 acres, more or less.

The 1986 BLM Shoshone-Eureka Resource Management Plan identifies these parcels of public land as suitable for disposal. The sale meets the disposal qualification of Section 205 of the Federal Land Transaction Facilitation Act of July 25, 2000, 43 U.S.C. 2304. The sale will be subject to the provisions of FLPMA and applicable regulations of the Secretary of the Interior, and will contain the reservation to the United States of a right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945). Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of the Act of October 21, 1976 (43 U.S.C. 1719) will be analyzed during processing of the proposed sale.

On publication of this notice in the **Federal Register**, the described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. On segregation, the BLM will no longer accept land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or two years after the date of publication of this notice, unless extended by the BLM Nevada State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land to Field Manager, BLM Battle Mountain Field Office.

Only written comments submitted by postal service or overnight mail to the Field Manager, BLM Battle Mountain District Office will be considered properly filed. Facsimiles, telephone calls, and electronic mails are unacceptable means of notification. Before including your address, phone number, e-mail, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Any adverse comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2)

Dated: September 30, 2008.

Stephen C. Drummond,

Acting Field Manager, Mount Lewis Field Office.

[FR Doc. E8–24386 Filed 10–14–08; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–648]

In the Matter of Certain Semiconductor Integration Circuits Using Tungsten Metallization and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Granting Motion To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 13) of the presiding administrative law judge (''ALJ'') granting a joint motion to amend the complaint and the notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. 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: The Commission instituted this investigation on May 21, 2008 based on a complaint filed on April 18, 2008 by LSI Corporation of Milpitas, California and Agere Systems Inc. of Allentown, Pennsylvania. 73 FR 29534–35 (May 21, 2008). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 semiconductor integrated circuits using tungsten metallization and products containing same by reason of infringement of claim 1 of U.S. Patent No. 5,227,335. The complaint named numerous respondents including NXP B.V. of the Netherlands and Micronas Semiconductor Holding AG (''Micronas AG'') of Switzerland. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

On September 2, 2008, the Commission issued notice of its determination not to review an ID granting the motion of complainants, NXP B.V. and proposed respondent NXP Semiconductors USA, Inc. (''NXP Semiconductors'') of San Jose, California to amend the complaint and notice of investigation to substitute NXP Semiconductors for NXP B.V. 73 FR 52064–65 (Sept. 9, 2008).

On July 23, 2008, complainants, Micronas AG, and proposed respondent Micronas GmbH of Germany moved to amend the complaint and notice of investigation to substitute Micronas GmbH for Micronas AG. No party opposed the motion.

On September 17, 2008, the ALJ issued the subject ID granting the joint motion to amend. No party petitioned for review of the ID. The Commission has determined not to review this ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.14 and 210.42(c) of the Commission's Rules of Practice and Procedure, 19 CFR 210.14, 210.42(c).

Issued: October 8, 2008

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–24555 Filed 10–14–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–602]

In the Matter of Certain GPS Devices and Products Containing Same; Notice of Commission Determination To Review in Part a Final Determination on Violation of Section 337; Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on August 8, 2008, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–1999. 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: The Commission instituted this investigation on May 7, 2007, based on a complaint filed by Global Locate, Inc. (''Global Locate''). 72 *FR* 25777 (May 7, 2007). 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 GPS (Global Positioning System) devices and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,417,801 (''the '801 patent''); 6,606,346 (''the '346 patent''); 6,651,000 (''the '000 patent''); 6,704,651 (''the '651 patent''); 6,937,187 (''the '187 patent''); and 7,158,080 (''the '080 patent''). The complaint named five respondents: SiRF Technology, Inc. (''SiRF''); Pharos Science & Applications, Inc. (''Pharos''); MiTAC International Corp. (''MiTAC''); Mio Technology Ltd., USA (''Mio''); and E-TEN Information Systems Co., Ltd. (''E-TEN'') (collectively, ''respondents''). The notice of investigation was subsequently amended to add Broadcom Corporation (''Broadcom'') as a complainant inasmuch as Broadcom acquired Global Locate.

On August 8, 2008, the ALJ issued his final ID, and on August 22, 2008, he issued his recommended determination on remedy and bonding. In his ID, the ALJ found a violation of section 337 in the importation and the sale after importation of certain GPS devices and products containing the same, in connection with the asserted claims of each of the six patents at issue. Respondents and the Commission investigative attorney (IA) each filed petitions for review on August 25, 2008. On September 5, 2008, Complainants and the IA each filed responses to the petitions for review.

On September 16, 2008, Respondents filed a motion for leave to reply in support of their petition for review of the ID. On September 22, 2008, Complainants opposed the motion.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review (1) ALJ's finding that Global Locate has standing to assert the '346 patent; (2) the ALJ's finding that SiRF directly infringes claim 1 of the '651 patent through its commercial activities; and (3) the ALJ's finding that SiRF directly infringes claim 1 of the '000 patent through its commercial activities. The Commission has determined not to review the remaining issues raised by the petitions for review, and has denied Respondents' motion for leave to file a reply.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Please address the issue of whether Global Locate has standing to assert the '346 patent in light of provision 2.1 in RX–286. Please cite record evidence and/or relevant legal precedent to support your position.

2. Does SiRF practice the element ''processing satellite signals * * *'' of the method of claim 1 of the '651 patent vicariously through end users of the accused products? *See BMC Resources, Inc.* v. *Paymentech, L.P.*, 498 F.3d 1373 (Fed. Cir. 2007) and *Muniauction, Inc.* v. *Thomson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008). Please cite record evidence and relevant legal authority to support your position.

3. Does SiRF practice the third element (''at the remote receiver, representing said formatted data in a second format supported by the remote receiver'') of the method of claim 1 of the '000 patent vicariously through end users of the accused products? S*ee BMC Resources, Inc.* v. *Paymentech, L.P.*, 498 F.3d 1373 (Fed. Cir. 2007) and *Muniauction, Inc.* v. *Thomson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008). Please cite record evidence and any relevant legal authority to support your position.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain*

Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Monday, October 27, 2008. Reply submissions must be filed no later than the close of business on Monday, November 3, 2008. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

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 sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: October 9, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–24553 Filed 10–14–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; Request for Information on Forced/Indentured Child Labor Pursuant to Executive Order 13126

AGENCY: Office of the Secretary, Labor.

ACTION: Request for information on forced child labor in the production of bricks, coal, foundry products, chemicals, cotton, grape products, toys, and fireworks in China.

SUMMARY: This notice is a request for information to assist the Department of Labor in conducting a review of a submission on forced child labor in the production of bricks, coal, foundry products, chemicals, cotton, grape products, toys, and fireworks in China. This review is being conducted pursuant to Executive Order 13126 (''Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor'') and the ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor'' at 48 CFR Subpart 22.15.

The Department anticipates that written information regarding forced child labor in the above products in China will aid it in determining, in consultation with the Departments of State and Homeland Security, whether these products, and their originating country, should be added to the Executive Order list.

DATES: Submitters of information are requested to provide two (2) copies of their written submission to the Office of Child Labor, Forced Labor and Human Trafficking (OCFT) at the address below by 5 p.m., December 15, 2008.

To Submit Information, or for Further Information, Contact: OCFT, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll free number). Information may be submitted by the following methods:

- *Facsimile (fax):* OCFT at 202–693–4830.
- *Mail, Express Delivery, Hand Delivery, and Messenger Service:* Brandie Sasser at U.S. Department of Labor, OCFT, Bureau of International Labor Affairs, 200 Constitution Avenue, NW., Room S–5317, Washington, DC 20210.
- *E-mail: EO13126@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Executive Order No. 13126, which was published in the **Federal Register** on June 16, 1999 (64 FR 32383–32385), declared that it was ''the policy of the United States Government'' that the executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of good, wares articles, and merchandise mined, produced or manufactured wholly or in part by forced or indentured child labor.'' Pursuant to the Executive Order, and following public notice and comment, the Department of Labor published in the January 18, 2001, **Federal Register**, a final list of products (the ''List''), identified by their country of origin, that the Department, in consultation and cooperation with the Departments of State and Treasury [relevant responsibilities now within the Department of Homeland Security], had a reasonable basis to believe might have been mined, produced or manufactured with forced or indentured child labor (66 FR 5353). In addition to the List, the Department also published on January 18, 2001, ''Procedural Guidelines for Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor,'' which provide for maintaining, reviewing, and, as appropriate, revising the list of products required by Executive Order 13126 (66 FR 5351). The List can be accessed on the Internet at *http://www.dol.gov/ilab*

or can be obtained from: Office of Child Labor, Forced Labor and Human Trafficking, Bureau of International Labor Affairs, Room S–5317, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–4843; fax (202) 693–4830. A copy of the Procedural Guidelines is also available from OCFT.

Pursuant to Section 3 of the Executive Order, the Federal Acquisition Regulatory Councils published a final rule in the **Federal Register** on January 18, 2001, providing that federal contractors who supply products that appear on the List issued by the Department of Labor must certify to the contracting officer that the contractor, or, in the case of an incorporated contractor, a responsible official of the contractor, has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce or manufacture any product furnished under the contract and that, on the basis of those efforts, the contractor is unaware of any such use of child labor. The regulation also imposes other requirements with respect to contracts for products on the Department of Labor's List. *See* 48 CFR Subpart 22.15.

II. China Executive Order Submission

The Department of Labor accepted for review a submission under Executive Order 13126 regarding the use of forced child labor in the production of bricks, coal, foundry products, chemicals, cotton, grape products, toys, and fireworks in China. Since accepting the submission for official review, OCFT has been collecting and assessing additional information on the topic from a variety of sources.

III. Definition of Forced/Indentured Child Labor

Under Section 6(c) of Executive Order 13126:

''Forced or indentured child labor'' means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Information Sought

The Department is requesting information about forced child labor in the production of bricks, coal, foundry products, chemicals, cotton, grape products, toys, and/or fireworks in China, as well as information on efforts made by the Government of China to address these problems. This notice is a general solicitation of comments from the public. All submitted comments will be made a part of the record of the review referred to above and will be available for public inspection.

Signed at Washington, DC this 9th day of October 2008.

Marcia Eugenio,

Director, Office of Child Labor, Forced Labor and Human Trafficking.

[FR Doc. E8–24410 Filed 10–14–08; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Request to be Selected as Payee (CM–910). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 15, 2008.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, E-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. *Background:* The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. 901, provides for the payment of benefits by the Department of Labor (DOL) to miners who are totally disabled due to pneumoconiosis and to certain survivors of the miner. If a beneficiary is incapable of handling his or her affairs, the person or institution responsible for their care is required to apply to receive the benefit payments on the beneficiary's behalf. The CM–910 is the form completed by the representative payee applicants. The payee applicant completes the form and mails it for evaluation to the district office that has jurisdiction over the beneficiary's claim file. Regulations 20 CFR 725.505–513 require the collection of this information. This information collection is currently approved for use through April 30, 2009.

II. *Review Focus:* The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. *Current Actions:* The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to evaluate an applicant's ability to be a representative payee. If the Program were not able to screen representative payee applicants the beneficiary's best interest would not be served.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Request to be Selected as Payee.

OMB Number: 1215–0166.

Agency Number: CM–910.

Affected Public: Individuals or households; Business or other for profit; Not-for-profit institutions.

Average Time per Response: 15 minutes.

Total Respondents: 2,500.

Total Annual Responses: 2,500.

Estimated Total Burden Hours: 625.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,125.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 9, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E8–24413 Filed 10–14–08; 8:45 am]

BILLING CODE 4510–CK–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2008–4 CRB CD 2006]

Distribution of the 2006 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice soliciting comments on motion of Phase I claimants for partial distribution.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2006 cable royalty funds.

DATES: Comments are due on or before November 14, 2008.

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

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

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying transmission and who timely filed a claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges \ (''Judges'') must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On August 27, 2008, representatives of the Phase I claimant categories (the ''Phase I Parties'') [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2006 cable royalty funds. Under section 801(b)(3)(C) of the Copyright Act, the Judges must publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive such fees has a reasonable objection to the requested distribution before ruling on the motion. Consequently, by today's Notice, the Judges seek comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2006 cable royalty funds to the Phase I Parties.

The Judges also seek comment on the existence and extent of any controversies to the 2006 cable royalty funds at Phase I with respect to the 50% of those funds that would remain if the partial distribution is granted. In Phase I of a cable royalty distribution, royalties are distributed to certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music, public radio programming, and Canadian programming. In Phase II of a cable royalty distribution, royalties are distributed to claimants within each of the Phase I categories.

The Judges must be advised of the existence and extent of all Phase I controversies by the end of the comment period. They will not consider any controversies that come to their attention after the close of that period.

The Motion of the Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb/proceedings/2008-4/08-27-08-phase1motion.pdf.*

Dated: October 8, 2008.

James Scott Sledge,

Chief Copyright Royalty Judge.

[FR Doc. E8–24438 Filed 10–14–08; 8:45 am]

BILLING CODE 1410–72–P

[1] The ''Phase I Parties'' are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, the National Association of Broadcasters, the American Society of Composers, Authors and Publishers, Broadcast Music, Inc., SESAC, Inc., Canadian Claimants, National Public Radio, and the Devotional Claimants.

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, October 16, 2008.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Proposed Rule—Section 740.4 of NCUA's Rules and Regulations, Requirements for the Official Sign.
3. Final Rule—Part 721 of NCUA Rules and Regulations, Incidental Powers.
4. Final Rule—Part 701 of NCUA Rules and Regulations, Interpretive Ruling and Policy Statement (IRPS) 08–2, Criteria to approve service to underserved areas.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Thursday, October 16, 2008.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. One (1) Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed

pursuant to Exemptions (8), and (9)(A)(ii) and (9)(B).

2. Consideration of supervisory activities. Closed pursuant to Exemptions (9)(A)(ii) and (9)(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. E8–24560 Filed 10–10–08; 11:15 am]

BILLING CODE 7535–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* November 3, 2008.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for Interpreting America's Historic Places Grants Program, submitted to the Division of Public Programs, at the August 27, 2008 deadline.

2. *Date:* November 6, 2008.
Time: 9 a.m. to 5 p.m.
Room: 421.
Program: This meeting will review applications for America's Media Makers Grants Program, submitted to the Division of Public Programs, at the August 27, 2008 deadline.

3. *Date:* November 6, 2008.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for World Studies I in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.

4. *Date:* November 18, 2008.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Music and Performing Arts in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.

5. *Date:* November 20, 2008.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for U.S. History and Culture III in Preservation and Access Humanities Collections and Resources, submitted to the Division of Preservation and Access, at the July 31, 2008 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. E8–24352 Filed 10–14–08; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2008–0368]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on July 9, 2008.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Registration Certificate In-Vitro Testing with Byproduct Material under General License.

3. *Current OMB approval number:* 3150–0038.

4. *The form number if applicable:* NRC Form 483.

5. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

6. *Who will be required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

7. *An estimate of the number of annual responses:* 85 (15 NRC Licensees and 70 Agreement State Licensees).

8. *The estimated number of annual respondents:* 85 (15 NRC Licensees and 70 Agreement State Licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 12.4 hours (Record keeping: 1.13 hours + Reporting: 2 hours NRC licensees and 9.3 hours Agreement State licensees).

10. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation there from to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician,

clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

A copy of the final 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 should be directed to the OMB reviewer listed below by November 14, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0121), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Russell Nichols, (301) 415–6874.

Dated at Rockville, Maryland, this 7th day of October 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–24507 Filed 10–14–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Notice of Cancellation of Meeting

The ACRS Subcommittee meeting on Materials, Metallurgy & Reactor Fuels scheduled for October 24, 2008, has been cancelled. This meeting was published previously in the **Federal Register** on Friday, October 3, 2008 (73 FR 57688).

For further information contact the Designated Federal Official Mr. Christopher L. Brown (Telephone: 301–415–7111) between 8:45 a.m. and 5:30 p.m. (ET).

Dated: October 8, 2008.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E8–24501 Filed 10–14–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of October 13, 20, 27, November 3, 10, 17, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of October 13, 2008

Friday, October 17, 2008

5 p.m. Affirmation Session (Public Meeting) (Tentative). a. Notice of Hearing on U.S. Department of Energy's Application Seeking Authorization to Construct a Geologic Repository at Yucca Mountain, Nevada. (Tentative).

Week of October 20, 2008—Tentative

Wednesday, October 22, 2008

9:30 a.m. Briefing on New Reactor Issues—Construction Readiness, Part 1 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

1:30 p.m.Briefing on New Reactor Issues—Construction Readiness, Part 2 (Public Meeting) (Contact: Roger Rihm, 301 415–7807).

Both parts of this meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of October 27, 2008—Tentative

There are no meetings scheduled for the week of October 27, 2008.

Week of November 3, 2008—Tentative

Thursday, November 6, 2008

1:30 p.m. Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301 415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Friday, November 7, 2008

2 p.m. Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Tanny Santos, 301–415–7270)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 10, 2008—Tentative

There are no meetings scheduled for the week of November 10, 2008.

Week of November 17, 2008—Tentative

There are no meetings scheduled for the week of November 17, 2008.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

Additional Information

Affirmation of ''*Pacific Gas and Electric Co.* (Diablo Canyon ISFSI), Docket No. 72–26–ISFSI, Decision on the Merits of San Luis Obispo Mothers for Peace's Contention 2, tentatively scheduled for Monday, October 6, 2008 at 12:55 p.m., was postponed and has not been rescheduled yet.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov.*

Dated: October 9, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–24569 Filed 10–10–08; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Withdrawal of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of Regulatory Guide 6.8.

FOR FURTHER INFORMATION CONTACT: Robert G. Carpenter, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6177 or e-mail to *Robert.Carpenter@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide 6.8, ''Identification Plaque for Irretrievable Well-Logging Sources,'' published in October 1978. Regulatory Guide 6.8 provides guidance on acceptable design and mounting practices of the plaques, which are placed at the surface of wells to indicate the presence of an irretrievable well-logging source. The NRC is withdrawing this regulatory guide because it is no longer required.

Regulatory Guide 6.8 references Title 10 of the *Code of Federal Regulations* (10 CFR), Sections 30 and 70, which no longer contain guidance for design or mounting of identification plaques. The current regulation regarding the identification plaques is found in 10 CFR 39.15, ''Agreement with Well Owner or Operator.'' Regulatory Guide 6.8 is no longer required because the current regulations in 10 CFR 39.15(a)(5) provide a specific description for the design and mounting of identification plaques for irretrievable well-logging sources. The instruction in 10 CFR 39.15(a)(5) is sufficient without further guidance.

II. Further Information

The withdrawal of Regulatory Guide 6.8 does not alter any prior or existing licensing commitments based on its use. The guidance provided in this regulatory guide is no longer necessary. Regulatory guides may be withdrawn when their guidance is superseded by congressional action or no longer provides useful information.

Regulatory guides are available for inspection or downloading through the NRC's public Web site under ''Regulatory Guides'' in the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Regulatory guides are also available for inspection at the NRC's Public Document Room (PDR), Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR's mailing address is U.S. NRC PDR, Washington, DC 20555–0001. You can reach the PDR staff by telephone at 301–415–4737 or 800–397–4209, by fax at 301–415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

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

For the Nuclear Regulatory Commission.

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E8–24504 Filed 10–14–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of four (4) standard forms: SF–269, Financial Status Report (Long Form); SF–269A, Financial Status Report (Short Form); SF–272, Federal Cash Transactions Report; and SF–272A, Federal Cash Transactions Report. OMB anticipates that this will be the last renewal of these forms. By no later than October 1, 2009, each federal agency must transition from the SF–269, SF–269A, SF–272, and SF–272A to the Federal Financial Report (FFR), by requiring recipients to use the FFR for all financial reports submitted after the date it makes the transition. In making the transition, an agency would incorporate the requirement to use the FFR into terms and conditions of new and ongoing grant and cooperative agreement awards, State plans, and/or program regulations that specify financial reporting requirements.

DATES: Comments must be submitted on or before December 15, 2008.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Comments may be sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type the form number in quotes in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Comments may be e-mailed to: *mpridgen@omb.eop.gov*. Please include the form number in the subject line of your e-mail message. Also, please include the full body of your comments in the text of the electronic message, as well as in an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–3952.

Comments may be mailed to Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–7844 (direct) or (202) 395–3993 (main office) and e-mail: *mpridgen@omb.eop.gov*. The standard forms can be downloaded from the OMB Grants Management home page (*http://www.whitehouse.gov/omb/grants/grants_forms.html*).

OMB Control No.: 0348–0039.

Title: Financial Status Report (Long Form).

Form No.: SF–269.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Universities, Non-Profit Organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–269 is used by federal grant recipients to report the financial status of grant funds. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0038.

Title: Financial Status Report (Short Form).

Form No.: SF–269A.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Universities, Non-Profit Organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–269A is used by federal grant recipients to report the financial status of grant funds. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348–0003.

Title: Federal Cash Transactions Report and Continuation Sheet.

Form Nos.: SF–272 and SF–272A.

Type of Review: Extension of a currently approved collection.

Respondents: States, Local Governments, Universities, Non-Profit Organizations.

Number of Responses: 100,000.

Estimated Time Per Response: 60 minutes.

Needs and Uses: The SF–272 and SF–272A are used by federal grant recipients to report cash transactions using grant funds. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

Office of Management and Budget.

Carrie Hug,

Chief, Financial Standards and Grants Branch, Office of Federal Financial Management.

[FR Doc. E8–24390 Filed 10–14–08; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 2:30 p.m., Monday, October 20, 2008; and 8 a.m., Tuesday, October 21, 2008.

PLACE: Memphis, Tennessee, at the Peabody Hotel, 149 Union Avenue.

STATUS: (Closed).

MATTERS TO BE CONSIDERED:

Monday, October 20, at 2:30 p.m. (Closed)

1. Financial Matters.
2. Product Pricing.
3. Strategic Issues.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Tuesday, October 21, at 8 a.m. (Closed)

1. Continuation of Monday's agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E8–24534 Filed 10–10–08; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 15c2–1, SEC File No. 270–418, OMB Control No. 3235–0485.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is publishing the following summaries of collections for public comment.

Rule 15c2–1 (17 CFR 240.15c2–1) prohibits the commingling under the same lien of securities of margin customers (a) with other customers without their written consent and (b) with the broker or dealer. The rule also prohibits the rehypothecation of customers' margin securities for a sum in excess of the customer's aggregate indebtedness. *See* Securities Exchange Act Release No. 2690 (November 15, 1940); Securities Exchange Act Release No. 9428 (December 29, 1971). Pursuant to Rule 15c2–1, respondents must collect information necessary to prevent the rehypothecation of customer securities in contravention of the rule, issue and retain copies of notices of hypothecation of customer securities in accordance with the rule, and collect written consents from customers in accordance with the rule. The information is necessary to ensure compliance with the rule, and to advise customers of the rule's protections.

There are approximately 126 respondents (*i.e.*, broker-dealers that carry or clear customer accounts that also have bank loans) that require an aggregate total of 2,835 hours to comply with the rule. Each of these approximately 126 registered broker-dealers makes an estimated 45 annual responses. Each response takes approximately 0.5 hours to complete. Thus, the total compliance burden per year is 2,835 burden hours.

Written 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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Lewis W. Walker, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: October 6, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24344 Filed 10–14–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, October 16, 2008 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (6), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (6), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, October 16, 2008 will be:

Formal orders of investigation;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: October 9, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24443 Filed 10–14–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58753; File No. SR–FINRA–2008–048]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility)

October 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 October 7, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(3) 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

FINRA is proposing to adopt FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to permit FINRA to halt over-the-counter (''OTC'') trading in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, if other major U.S. securities markets initiate market-wide trading halts in response to extraordinary market conditions.

Below is the text of the proposed rule change. Proposed new language is in italics.[5]

* * * * *

6000. Quotation and Transaction Reporting Facilities

6100. Quoting and Trading in NMS Stocks

* * * * *

6121. Trading Halts Due to Extraordinary Market Volatility

Pursuant to the procedures set forth in Rule 6120(b), FINRA shall halt all trading otherwise than on an exchange in any NMS stock, as defined in Rule 600(b)(47) of SEC Regulation NMS, if other major securities markets initiate market-wide trading halts in response to their rules or extraordinary market conditions or if otherwise directed by the Securities and Exchange Commission.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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 1988, the SEC approved several rule proposals by the national securities exchanges, along with a policy statement by FINRA (then known as NASD),[6] which provide trading halt authority in the event of severe market declines (referred to as ''circuit breakers''). These provisions were adopted in response to the severe market decline that occurred in October 1987. The provisions were intended to enable the self-regulatory organizations (''SROs'') to provide coordinated means to address potentially destabilizing market volatility.

National securities exchanges generally have circuit breaker rules whereby the trading in all exchange-listed securities is halted based on a one-day decline of 10%, 20% and 30% of the Dow Jones Industrial Average (''DJIA''), with the percentage value based on the average closing value of the DJIA for the month prior to the beginning of the quarter, or have other general authority to halt trading in response to similar extraordinary market conditions.[7] Unlike the exchanges, FINRA does not have an express circuit

[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)(3).

[5] On September 25, 2008, the SEC approved proposed rule change SR–FINRA–2008–021, in which FINRA proposed, among other things, to adopt the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (order approving SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029). As part of that proposed rule change, FINRA adopted new FINRA Rule 6120 (Trading Halts), which consolidates its trading halt rules relating to OTC trading in NMS stocks (*i.e.*, NASD Rules 4120A, 4633, 4633C and 4633E).

[6] FINRA's Policy Statement on Market Closings, which was adopted under FINRA's authority in Article VII, Section 3 of the By-Laws, provided, among other things, that, when other major securities markets initiate market-wide trading halts in response to extraordinary market conditions, FINRA will, upon SEC request, halt domestic trading in all securities in equity and equity-related securities in the OTC market. As part of the approval order, the SEC requested that FINRA impose a trading halt as quickly as practicable whenever the NYSE and other equity markets have suspended trading. *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988) (order approving SR–NASD–88–46). The Policy Statement, which was adopted on a pilot basis and extended numerous times, expired on December 31, 1997. *See* Securities Exchange Act Release No. 36563 (December 7, 1995), 60 FR 64084 (December 13, 1995) (order approving SR–NASD–95–57). FINRA has represented orally and in writing that it will continue to follow, upon SEC request, a trading halt during the triggering of intermarket circuit breakers. *See* Letter from Richard Ketchum, Chief Operating Officer and Executive Vice President, NASD, dated January 23, 1998. The language in the Policy Statement was subsequently codified, on a pilot basis, in Interpretive Material (IM) 4120–3 (later renumbered IM–4120–4). *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (order approving SR–NASD–98–27). The IM–4120–3 pilot, which also was extended numerous times, expired on April 30, 2002.

[7] *See, e.g.*, NYSE Rule 80B, NYSE Arca Equities Rule 7.12 and NASDAQ Exchange Rule 4121.

breaker rule; however, FINRA's Board has authority to act in certain emergency or extraordinary market conditions pursuant to Article VII, Section 3 of FINRA's By-Laws.

FINRA is proposing to adopt new FINRA Rule 6121, which would authorize FINRA to halt OTC trading of NMS stocks if other major U.S. securities markets initiate market-wide trading halts in response to their rules or extraordinary market conditions or if otherwise directed by the SEC. FINRA believes that such generalized authority is appropriate and necessary to provide adequate flexibility to deal with extraordinary market conditions. FINRA also believes the proposed rule change will further the goal of coordinated SRO action to address potentially destabilizing market volatility, consistent with the circuit breaker trading halt authority of the exchanges.

FINRA has filed the proposed rule change for immediate effectiveness. The operative date of the proposed rule change is the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the circuit breaker rules of other SROs and will further the goal of investor protection by providing a coordinated means to address potentially destabilizing market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in 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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f)(3) of Rule 19b–4 thereunder,[10] in that the proposed rule change is concerned solely with the administration of the self-regulatory organization. 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–FINRA–2008–048 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–048. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2008–048 and should be submitted on or before November 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24376 Filed 10–14–08; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78o–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58754; File No. SR–FINRA–2008–049]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to UPC Advisory on Trading Halts in OTC Equity Securities

October 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 October 7, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change 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) 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

FINRA is filing a *Uniform Practice Code (UPC) Advisory* that provides

[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)(1).

notice that FINRA will halt trading in OTC Equity Securities under FINRA Rule 6460(a)(3) (formerly NASD Rule 6660(a)(3)) if there is a market-wide halt in trading in NMS stocks.[5]

The text of the proposed *UPC Advisory* is attached as Exhibit 1. There are no changes to the text of FINRA rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA 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

National securities exchanges generally have circuit breaker rules whereby the trading in all exchange-listed securities is halted based on a one-day decline of 10%, 20% and 30% of the Dow Jones Industrial Average (''DJIA''), with the percentage value based on the average closing value of the DJIA for the month prior to the beginning of the quarter, or have other general authority to halt trading in response to similar extraordinary market conditions.[6] Unlike the exchanges, with respect to OTC Equity Securities (as that term is defined in the FINRA Rule 6400 Series (formerly NASD Rule 6600 Series)), FINRA does not have an express circuit breaker rule but relies on its authority under FINRA Rule 6460(a)(3) (formerly NASD Rule 6660(a)(3)), which provides that FINRA may halt quoting and trading in OTC equity securities if FINRA determines that an extraordinary event has occurred or is ongoing that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace and/or significant uncertainty in the settlement and clearance process. FINRA considers a market-wide halt in the trading of exchange-listed securities to be an extraordinary event under Rule 6460(a)(3) and has therefore published a *UPC Advisory* (attached as Exhibit 1) to give notice to members and other interested parties that FINRA will halt quoting and trading in OTC Equity Securities under these circumstances.

FINRA has filed the proposed rule change for immediate effectiveness and it is operative on the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the circuit breaker rules of other SROs and will further the goal of investor protection by providing a coordinated means to address potentially destabilizing market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in 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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f)(1) of Rule 19b–4 thereunder,[9] in that the proposed rule change is 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 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–FINRA–2008–049 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–049. 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 the filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–

[5] On September 25, 2008, the SEC approved proposed rule change SR–FINRA–2008–021, in which FINRA proposed, among other things, to adopt the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029). As part of that proposed rule change, FINRA adopted the provisions of NASD Rule 6660 as new FINRA Rule 6460 relating to trading and quotation halts in OTC Equity Securities.

[6] *See, e.g.*, NYSE Rule 80B, NYSE Arca Equities Rule 7.12 and NASDAQ Exchange Rule 4121.

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

2008–049 and should be submitted on or before November 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

Exhibit 1

Attn: Trading and Market Making/Legal and Compliance/Operations/Systems

Uniform Practice Advisory (UPC # XXX–2008) October 6, 2008

Exchange Circuit Breaker Declaration—FINRA OTC Equity Market Trigger

FINRA Rule 6460 (NASD Rule 6660)

Financial Industry Regulatory Authority, Inc. (FINRA) members are hereby provided notice that upon FINRA's receipt of actual notification (via the NMS consolidated data plans or otherwise) that a market-wide trading halt has been declared for NMS stocks, due to a percentage-based circuit breaker having been triggered, FINRA will exercise its authority under FINRA Rule 6460(a)(3) (NASD Rule 6660(a)(3)) to halt quoting and trading activity in the market for OTC Equity securities (as defined in the FINRA Rule 6400 Series (NASD Rule 6600 Series)).[11] Questions regarding this notice should be directed to: FINRA Operations, 866–776–0800.

[FR Doc. E8–24377 Filed 10–14–08; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

[11] On September 25, 2008, the SEC approved proposed rule change SR–FINRA–2008–021, in which FINRA proposed, among other things, to adopt the NASD Marketplace Rules (the NASD Rule 4000 through 7000 Series) as the FINRA Rule 6000 through 7000 Series in the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029). As part of that proposed rule change, FINRA adopted the provisions of NASD Rule 6660 as new FINRA Rule 6460 relating to trading and quotation halts in OTC Equity Securities.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58755; File No. SR–Phlx–2008–71]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ OMX PHLX, Inc. Relating to Deleting Unnecessary Fees

October 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 October 1, 2008, the NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been 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, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to update its fee schedules by deleting fees that the Exchange has deemed no longer necessary.

Specifically, the Exchange proposes to delete its Summary of Physical Delivery Currency Option Charges fee schedule. The Exchange also proposes to delete the following fees from Appendix A of its fee schedule: Foreign Currency User Fee; Transfer Fee for Foreign Currency Options (''FCO'') Participant; Direct Wire to the Floor; Wireless Telephone System; Tether Initial Connectivity Fee;[5] Execution Services/Communication Charge; Phlx CCH Wall Street (''CCH'') Guide; Option Report Service (New York and Chicago); Instinet, Reuters Equipment; and the Hyperfeed fee.

While changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to become effective on October 1, 2008.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.phlx.com/regulatory/reg_rulefilings.aspx*.

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 purpose of the proposed rule change is to update the Exchange's fee schedule to delete fees that the Exchange believes are no longer necessary. Specifically, the Exchange no longer provides a trading venue for physical delivery FCOs. Thus, the Summary of Physical Delivery Currency Option Charges no longer applies to products traded at the Exchange.[6]

Additionally, the Exchange no longer offers FCO participations. Therefore, the Foreign Currency User Fee and the Transfer Fee for FCO Participants are no longer necessary.

For business purposes, the Exchange has determined not to assess the following fees: Direct Wire to the Floor; Wireless Telephone System; and Execution Service/Communication Charges. These fees, which relate generally to telephone access to the floor, are not deemed necessary at this time. Additionally, the Exchange believes the Tether Initial Connectivity Fee, which refers to establishing a hardwire connection to an existing communication network on the trading floor, is no longer necessary at this time. Currently, there is not a significant demand for this type of telephone access to the floor or for establishing a hardwire connection to an existing communication network on the trading floor.

With respect to the Phlx CCH Guide, which includes Phlx By-Laws and rules, the Exchange will no longer supply members with a hard copy of the Phlx CCH Guide because the guide is now available on-line through the Phlx Web site.[7] The fees relating to the Option Report Service (New York and Chicago), Instinet, Reuters Equipment, and Hyperfeed are not required because these services are no longer being offered by the Exchange.

While changes to the fee schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to become effective on October 1, 2008.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] The $150 Tether Monthly Service Fee will continue to be assessed.

[6] Exchange members, however, may still trade foreign currency options. The Exchange currently has a separate fee schedule for U.S. dollar-settled foreign currency options.

[7] There is no fee to access the Phlx CCH Guide on-line.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that updating its fee schedules to delete the above-referenced fee will more accurately reflect the fees that are currently assessed by the Exchange, which should, in turn, help to eliminate any member confusion as to which fees apply. Additionally, members who were assessed any of the applicable fees set forth above, such as the fees relating to telephone access to the floor, should benefit financially from the elimination of these fees.

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 rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and paragraph (f)(2) of Rule 19b–4[11] 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–Phlx–2008–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–71. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. 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–2008–71 and should be submitted on or before November 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24365 Filed 10–14–08; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58752; File No. SR–NASDAQ–2008–080]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees for Access to the Clearly Erroneous Functionality of the Nasdaq Regulation Reconnaissance Service

October 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 October 6, 2008, The NASDAQ Stock Market LLC (''Nasdaq'') 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 by Nasdaq. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

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

Nasdaq proposes to establish fees for access to the Clearly Erroneous functionality provided by the Nasdaq Regulation Reconnaissance Service.

The text of the proposed rule change is below. Proposed new language is in italics.[5]

* * * * *

7041. Nasdaq Regulation Reconnaissance Service

(a) No change.

(b) The Clearly Erroneous Viewer will be available to non-Regulation Reconnaissance Service subscribers for a subscription fee of $100 per MPID, per month.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii)

[4] 17 C.F.R. 240.19b–4(f)(2).

[5] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://nasdaqomx.cchwallstreet.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, Nasdaq 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. Nasdaq 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

Nasdaq proposes to establish fees for limited access to the Clearly Erroneous Module of the Nasdaq Regulation Reconnaissance Service (''Reg Recon''). Reg Recon is currently available as an add-on to the Nasdaq Workstation and Weblink ACT 2.0. Reg Recon includes a Clearly Erroneous Module, which gives a subscribing firm real-time alerts when the firm has potentially erroneous trades.

The Clearly Erroneous Module also offers Reg Recon subscribers an automated filing functionality, whereby a user can select their erroneous trades and electronically file them with Nasdaq's Market Watch Department in lieu of locating the form on the Nasdaq Web site and manually entering in all of the required information.

Nasdaq proposes to offer access to the Clearly Erroneous Module through the Clearly Erroneous Viewer, which will provide users with the same functionality as the Clearly Erroneous Module without having to pay for the full suite of functionality provided by the Nasdaq Workstation and Weblink ACT 2.0. Regulation NMS monitoring is typically conducted by a small number of people within a firm's compliance group, and often requires look-ups in ACT and/or Time and Sales, both of which are offered by Nasdaq Workstation and Weblink ACT 2.0. Responsibility for a firm's clearly erroneous filings, however, is typically spread out across a much larger group of individuals at a firm. These individuals do not need the additional functionality that is provided by the Nasdaq Workstation or Weblink 2.0, yet to access the Clearly Erroneous Module firms must pay the full amount for the Nasdaq Workstation or Weblink ACT 2.0, currently $475 per user, per month and $375 per month, respectively.[6] As such, Nasdaq is proposing to offer the Clearly Erroneous viewer for a subscription fee of $100 per user, per month. The proposed fee will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Nasdaq operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. Use of the Clearly Erroneous Viewer is voluntary and the subscription fees will be imposed on all purchasers equally. The proposed fees will cover the costs associated with establishing the service, responding to customer requests, configuring Nasdaq's systems, programming to user specifications, and administering the service, among other things.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder.[10] 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–NASDAQ–2008–080 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2008–080. 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 Nasdaq. 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–NASDAQ–2008–080 and should be submitted on or before November 5, 2008.

[6] Weblink users with up to an average of twenty transactions per day each month are charged a fee of $200 per month.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24375 Filed 10–14–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58732; File No. SR–NYSE–2008–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Extend Until January 9, 2009, the Operation of Interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') Which Permits the Exchange To Cancel or Adjust Clearly Erroneous Executions if They Rise Out of the Use or Operation of Any Quotation, Execution or Communication System Owned or Operated by the Exchange, Including Those Executions That Occur in the Event of a System Disruption or System Malfunction

October 3, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 1, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE designated the proposed rule change as ''non-controversial'' under Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend until January 9, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend until January 9, 2009, the operation of interim NYSE Rule 128 (''Clearly Erroneous Executions for NYSE Equities'') which permits the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption or system malfunction.

Prior to the implementation of NYSE Rule 128 on January 28, 2008,[6] the NYSE did not have a rule providing the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE.

In order for the NYSE to be consistent with other national securities exchanges which have some version of a clearly erroneous execution rule, the Exchange is drafting an amended clearly erroneous rule which will accommodate such other exchanges but will be appropriate for the NYSE market model.

The NYSE notes that the Commission approved an amended clearly erroneous execution rule for Nasdaq in May 2008.[7] On July 28, 2008, the Exchange filed with the SEC a request to extend the operation of interim Rule 128 until October 1, 2008[8] in order to review the provisions of Nasdaq's clearly erroneous rule and to consider integrating similar standards into its own amendment to Rule 128. The Exchange has not finalized its review of Nasdaq's amended rule and the possible proposed amendment of Rule 128 and is, therefore, requesting to extend the operation of interim Rule 128 until January 9, 2009. Prior to January 9, 2009, the Exchange intends to file a 19b–4 rule change amending interim Rule 128, which, if approved by the SEC, will be effective after January 9, 2009.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[9] in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

As articulated more fully above, the proposed rule would place the NYSE on equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous or trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

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

No written comments were solicited or received with respect to the proposed rule change.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 57323 (February 13, 2008), 73 FR 9371 (February 20, 2008) (SR–NYSE–2008–09).

[7] *See* Securities Exchange Act Release No. 57826 (May 15, 2008), 73 FR 29802 (May 22, 2008) (SR–NASDAQ–2007–001).

[8] *See* Securities Exchange Act Release No. 58328 (August 8, 2008), 73 FR 47247 (August 13, 2008) (SR–NYSE–2008–63).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(6)[11] thereunder. The proposed rule change effects a change that (A) Does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that good cause, consistent with the provisions of Rule 19b–4(f)(6), exists to justify making the rule change immediately effective. Because the proposed rule is based on a rule that has been previously approved by the Commission, and because the proposed rule would in any event be operative only until a more robust and market-appropriate rule was implemented, the NYSE believes that the proposed rule is non-controversial. Moreover, the NYSE believes that the absence of such a rule in an automated and fast-paced trading environment poses a danger to the integrity of the markets and the public interest, and that this exigency justifies filing the rule for immediate effectiveness rather than using the regular Rule 19b–2 process, which would require the Exchange to continue without the protection of the proposed rule until the expiration of the prescribed time periods for notice, comment and approval. In contrast, immediate effectiveness of the proposed rule will immediately and timely enable the NYSE to cancel or adjust clearly erroneous trades that may present a risk to the integrity of the equities markets and all related markets. The proposed rule will also allow the Exchange to protect customers and the public interest, and to continue to provide economically efficient execution of securities transactions.

The NYSE also requests that the Commission waive the five-day period for notice of intent to file this proposed rule change, and the 30-day period before the rule becomes operative, both of which are prescribed by Rule 19b–4(f)(6), but which may be waived pursuant to Rule 19b–4(f)(6)(iii)[12] if such action is consistent with the protection of investors and public interest.[13] The Exchange believes that waiver of these time periods so that the rule may be immediately operative are consistent with the protection of investors and the public interest for the reasons described above.

The Commission believes that waiving the 30-day operative delay will allow the Exchange to continue to immediately and timely cancel or adjust trades that it determines to be clearly erroneous under Rule 128. The Commission believes that the extension of NYSE Rule 128 until January 9, 2009 will allow the Exchange to continue to apply the rule without interruption and is consistent with the protection of investors and the public interest. The Commission hereby designates the proposal as operative upon filing.[14] The Commission has determined to waive the five-day prefiling period in this case.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2008–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–99 and should be submitted on or before November 5, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–24369 Filed 10–14–08; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] In fact, the Commission notes, under Rule 19b–4(f)(6)(iii), the ''consistent with the protection of investors and public interest'' standard applies only to the Commission's waiver of the 30-day operative delay. 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.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to

submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before November 14, 2008. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Disaster Business Loan Application.

SBA Form Numbers: 5 & 1368.

Frequency: On Occasion.

Description of Respondents: Application for benefits (loan) used to determine eligibility and credit worthiness of Small Business or not-for-profit organizations who seek Federal assistance in a declared disaster. Respondents are disaster victims seeking disaster assistance.

Responses: 9,510.

Annual Burden: 22,208.

Title: Disaster Business Loan Application.

SBA Form Number: 5C.

Frequency: On Occasion.

Description of Respondents: Application for benefits (loan) used to determine eligibility and credit worthiness of Small Business or not-for-profit organizations who seek Federal assistance in a declared disaster. Respondents are disaster victims seeking disaster assistance.

Responses: 49,862.

Annual Burden: 74,793.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E8–24489 Filed 10–14–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6399]

30-Day Notice of Proposed Information Collection: DS–234, Application for Special Immigrant Visa and Alien Registration, OMB Number 1405–0015

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application for Special Immigrant Visa.
- *OMB Control Number:* 1405–0015.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–234.
- *Respondents:* Iraqi and Afghan special immigrant visa applicants.
- *Estimated Number of Respondents:* 12,000 per year.
- *Estimated Number of Responses:* 12,000 per year.
- *Average Hours Per Response:* 20 minutes.
- *Total Estimated Burden:* 4,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain U.S. resettlement benefits.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from October 15, 2008.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- *E-mail: kastrich@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions)*: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Jessica Firestein of the Office of Admissions, Bureau of Population, Refugees and Migration, U.S. Department of State, 2401 E. Street, NW. L–505, Washington, DC 20522, who may be reached at *firesteinjy@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

Form DS–234 is being added to this collection to elicit information that will be used by the Department of State to identify an appropriate resettlement site in the United States and correctly allocate additional services for Iraqi and Afghan special immigrant visa recipients. The recipients are eligible for resettlement benefits administered by the Department of State under Public Laws 110–161 and 110–181, as amended by Public Law 110–242.

Methodology

The SIV Bio-data information form (DS–234) is submitted electronically by the applicant to the National Visa Center, which will forward the forms to the Refugee Processing Center of the Bureau of Population, Refugees and Migration.

Dated: October 3, 2008.

Lawrence Bartlett,

Deputy Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. E8–24470 Filed 10–14–08; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF STATE

[Public Notice 6394]

Culturally Significant Objects Imported for Exhibition Determinations: ''Chagall and the Artists of the Russian Jewish Theater, 1919–1949''

ACTION: Notice, Correction.

SUMMARY: On September 5, 2008, notice was published on page 51875 of the **Federal Register** (volume 73, number 173) of determinations made by the Department of State pertaining to the

exhibit, ''Chagall and the Artists of the Russian Jewish Theater, 1919–1949.'' The referenced notice is corrected as to an additional object to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the additional object to be included in the exhibition ''Chagall and the Artists of the Russian Jewish Theater, 1919–1949'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The additional object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at The Jewish Museum, New York, New York, from on or about November 9, 2008, until on or about March 22, 2009; and at The Contemporary Jewish Museum, San Francisco, California, from on or about April 19, 2009 until on or about September 7, 2009; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 25, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–24463 Filed 10–14–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6396]

Culturally Significant Objects Imported for Exhibition Determinations: ''Leon Ferrari and Mira Schendel: Objects of Silence/Written Paintings''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Leon Ferrari and Mira Schendel: Objects of Silence/ Written Paintings'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about April 5, 2009, until on or about June 15, 2009; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 19, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–24462 Filed 10–14–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6397]

Culturally Significant Objects Imported for Exhibition Determinations: ''Raphael to Renoir: Drawings From the Collection of Jean Bonna''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Raphael to Renoir: Drawings from the Collection of Jean Bonna,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about January 21, 2009, until on or about April 26, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 7, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8–24459 Filed 10–14–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6400]

Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on November 13, 2008 at 11 a.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 12 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on April 25, 2008 and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2008 through September 30, 2008.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an e-mail to *BurdenVK@State.gov* by November 6 to make arrangements to enter the building. The public may take part in

the discussion as long as time permits and at the discretion of the chairman.

Dated: October 7, 2008.

Marcee Craighill,

Secretary, Fine Arts Committee, Department of State.

[FR Doc. E8–24516 Filed 10–14–08; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2007–0108]

National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice announces a meeting of the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays.

DATES: The Task Force meeting is scheduled for November 12, 2008, from 8:30 a.m. to 5 p.m., Eastern Time.

ADDRESSES: The Task Force meeting will be held at the U.S. Department of Transportation (U.S. DOT), 1200 New Jersey Avenue, SE., Washington, DC, in the Oklahoma City Conference Room on the lobby level of the West Building.

FOR FURTHER INFORMATION OR TO CONTACT THE DEPARTMENT CONCERNING THE TASK FORCE: Livaughn Chapman, Jr., or Kathleen Blank-Riether, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W–96–429, Washington, DC 20590–0001; Phone: (202) 366–9342; Fax: (202) 366–7152; E-mail: *Livaughn.Chapman@dot.gov*, or *Kathleen.Blankriether@dot.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and the General Services Administration regulations covering management of Federal advisory committees, 41 CFR Part 102–3, this notice announces a meeting of the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays. The meeting will be held on November 12, 2008, between 8:30 a.m. and 5 p.m. at the U.S. Department of Transportation (U.S. DOT), 1200 New Jersey Avenue, SE., Washington, DC, in the Oklahoma City Conference Room on the lobby level of the West Building.

DOT's Office of Inspector General recommended, in its audit report, entitled ''Actions Needed to Minimize Long, On-Board Flight Delays,'' issued on September 25, 2007, that the Secretary of Transportation establish a national task force of airlines, airports, and the Federal Aviation Administration (FAA) to coordinate and develop contingency plans to deal with lengthy delays, such as working with carriers and airports to share facilities and make gates available in an emergency. To effectuate this recommendation, on January 3, 2008, the Department, consistent with the requirements of the FACA, established the National Task Force to Develop Model Contingency Plans to Deal with Lengthy Airline On-Board Ground Delays. The first meeting of the Task Force took place on February 26, 2008. The November 12, 2008, meeting will be the seventh and final meeting of the task force.

The agenda topics for the November 12, 2008, meeting will include a vote by Task Force members for or against recommending the contingency planning document to the Secretary of Transportation as a tool to help manage/minimize the impact of lengthy on-board ground delays, and presentations by Task Force members on their views of the contingency planning document.

Attendance is open to the public, and time will be provided for comments by members of the public. Since access to the U.S. DOT headquarters building is controlled for security purposes, any member of the general public who plans to attend this meeting must notify the Department contact noted above no later than ten (10) calendar days prior to the meeting. Attendance will be necessarily limited by the size of the meeting room.

Members of the public may present written comments at any time and, at the discretion of the Chairman and time permitting, oral comments at the meeting. Any oral comments permitted must be limited to agenda items and will be limited to five (5) minutes per person. Members of the public who wish to present oral comments must notify the Department contact noted above via e-mail at least ten (10) calendar days prior to the meeting that they wish to attend and present oral comments. For the November 12, 2008, meeting, no more than one hour will be set aside for oral comments. Although written material may be filed in the docket at any time, comments regarding upcoming meeting topics should be sent to the Task Force docket, (10) calendar days prior to the meeting. Members of the public may also contact the Department contact noted above to be placed on the Task Force mailing list.

Persons with a disability requiring special accommodations, such as an interpreter for the hearing impaired, should get in touch with the Department contact noted above at least seven (7) calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations covering management of Federal advisory committees.

Issued on: October 9, 2008.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement & Proceedings, U.S. Department of Transportation.

[FR Doc. E8–24538 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–45]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before November 4, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–0927 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frances Shaver, (202) 267–9681, or Katrina Holiday, (202) 267–3603, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

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

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–0927.

Petitioner: Honeywell, Defense & Space Electronics System.

Section of 14 CFR Affected: § 21.195(d)(2).

Description of Relief Sought: Honeywell requests an exemption to gain an experimental airworthiness certificate to conduct customer crew training with less than 50 flight hours.

[FR Doc. E8–24442 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for certain steel products used in Federal-aid bridge construction projects in North Carolina.

DATES: The effective date of the waiver is October 16, 2008.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, *michael.harkins@dot.gov.* Office hours for the FHWA are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when application of the requirements would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for specialty machinery and motor brakes used on certain bridge projects in North Carolina.

In accordance with section 130 of Division K of the ''Consolidated Appropriations Act, 2008'' (Pub. L. 110–161), on August 21, 2008, the FHWA published on its Web site a notice of intent to issue a waiver for machinery and motor brakes (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=19*). The FHWA received one comment which supported the waiver if it is not for multiple applications. During the 15-day comment period, the FHWA conducted an additional nationwide review to locate potential domestic manufacturers of machinery and motor brakes. Based on all the information available to the Agency, including the response received to the notice as well as the Agency's nationwide review, the FHWA concludes that there are no domestic manufacturers for these products, and a Buy America waiver is appropriate as provided by 23 CFR 635.410(c)(1).

In accordance with the provisions of section 117 of the ''SAFETEA–LU Technical Corrections Act of 2008'' (Pub. L. 110–244, 122 Stat.1572), the FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the links above to the North Carolina waiver pages noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: October 6, 2008.

Thomas J. Madison, Jr.,

Federal Highway Administrator.

[FR Doc. E8–24529 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2008–0175]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt forty-seven individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective October 15, 2008. The exemptions expire on October 15, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document

Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19476, Apr. 11, 2000). This statement is also available at *http://Docketsinfo.dot.gov*.

Background

On August 5, 2008, FMCSA published a notice announcing receipt of applications for exemption from the Federal diabetes standard from forty-seven individuals, and requested comments from the public (73 FR 45519). The public comment period closed on September 4, 2008, and three comments were received.

FMCSA has evaluated the eligibility of the forty-seven applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 Notice (68 FR 52442) in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These forty-seven applicants have had ITDM over a range of 1 to 46 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or that resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage his or her diabetes, received education related to diabetes management, and is on a stable insulin regimen. Each driver reports no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the August 5, 2008, **Federal Register** Notice (73 FR 45519). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submits to FMCSA a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports to FMCSA within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received three comments in this proceeding. Two of the comments were recommendations in favor of granting the Federal diabetes exemption to Mr. Tyree L. Murdock II. and Mr. Brian Wallisch. The third comment was also a recommendation in favor of granting Federal diabetes exemptions to individuals with ITDM.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the forty-seven exemption applications, FMCSA exempts, Robert V. Balmes, David R. Bauerdorf, Stephen R. Bortz, John A. Broeker, Daniel A. Brown, Floyd G. Burbach, Kenneth M. Brinker, Richard A. Bruyere, Randie L. Burrows, Scott R. Butler, Jay P. Cave, Jeffrey A. Clark, Terry C. Conwell, Steven M. French, Glennon E. Goetting, Philip P. Gray, John L. Hansen, Darin D. Harries, William E. Hollowell, Cindy L. Hushin-Brink, Steven L. Jensen, Mark A. Kabriel, Kevin K. Kimbro, Richard D. Knoche, Jonathan D. Koehn, Robert J. Lanczkowski, Terry G. Lindahl, Paula S. Lewis, Edward M. Mason, John M. McAuliffe, John A. McMurray, Kurt V. Miller, William W. Moffat, Tyree L. Murdock, II., Edward A. Ortega, David W. Payne, Richard Rodriguez, Scott D. Schultz, Daniel S. Sherman, Marvin R. Shipman, Mark W. Seem, Ricky Sirico, Daryl L. Vaughn, Brian K. Wallisch, Steven S. Whitt, Jr., Andrew A. Zizza, Mick B. Zoske, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid

for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 25, 2008.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–24380 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Closing of Funding Availability and Request for Comments for the Capital Assistance to States—Intercity Passenger Rail Service Program for Fiscal Year 2008

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Closing of Funding Availability and Request for Comments.

SUMMARY: On February 19, 2008, FRA issued a Notice of Funding Availability and Solicitation of Applications for the Capital Assistance to States—Intercity Passenger Rail Service Program for Fiscal Year (FY) 2008. On September 30, 2008, DOT announced the selection of awardees for the available FY 2008 funding. Therefore, FRA is now announcing that it will no longer be accepting applications for awards of the FY 2008 funding. FRA is also requesting, in preparation for a possible FY 2009 Notice of Funding Availability and Solicitation of Applications, that past and prospective applicants (or associations representing past and prospective applicants) submit comments regarding their experience with the program and suggestions for possible improvements.

DATES: Comments should be submitted no later than December 5, 2008.

ADDRESSES: Past and prospective applicants (or associations representing past and prospective applicants) may submit comments identified by the docket number FRA–2008–0115 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Fax:* 1–202–493–2251.

Instructions: All submissions must include the agency name and docket number (FRA–2008–0115) for this program. Note that all comments received will be posted, without change, to *http://www.regulations.gov*, including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials. Internet users may access comments received by DOT at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Schwartz, Office of Railroad Development (RDV–11), Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Phone: (202) 493–6360; Fax: (202) 493–6330.

SUPPLEMENTARY INFORMATION: FRA anticipates that it will publish during the second quarter of FY 2009 a Notice of Funding Availability and Solicitation of Applications for the Capital Assistance to States—Intercity Passenger Rail Service Program for funding made available for FY 2009. In preparation for such an announcement, FRA is requesting that past and prospective applicants submit comments regarding their experience with the program during FY 2008 and their suggestions for possible improvements. Those interested in submitting comments should do so by the methods specified in the **ADDRESSES** heading above no later than December 5, 2008.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of a State, association, business, or labor union). 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://DocketsInfo.dot.gov*.

Issued in Washington, DC, on October 8, 2008.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E8–24524 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0009, Notice No. 4]

Declaration of Emergency Event

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Notice of declaration of emergency event.

SUMMARY: On September 26, 2008, the Administrator of the Federal Railroad Administration (FRA) determined that the impending landfall of tropical storm Kyle on the coast of the United States and the potential of that storm to reach hurricane status constituted an emergency event as related to railroad operations. Accordingly, the Administrator activated the Emergency Relief Docket. This document provides notice of the Administrator's determination.

SUPPLEMENTARY INFORMATION: On September 26, 2008, the Administrator of FRA determined that the impending landfall of tropical storm Kyle on the coast of the United States and that potential of that storm to reach hurricane status constituted an emergency event pursuant to Title 49 Code of Federal Refulations (CFR) Part 211.45(c) and that public safety required the implementation of FRA's emergency waiver rule directly related to the emergency. Accordingly, the Administrator activated the Emergency Relief Docket (Docket Number FRA–2008–0009) and in accordance with 49 CFR Part 211.45(g), petitions received in that docket pursuant to this emergency event will be handled according to the requirements of 49 CFR Part 211.45(g)–(j).

Interested parties are reminded that the procedures in 49 CFR Part 211.45 provide for expedited review and processing of emergency waiver petitions. Accordingly, in accordance with 49 CFR Part 211.45(h), any person wishing to comment on petitions for emergency waivers should submit their comments to the docket within 72 hours from the close of business on the day that the petition is posted in the public docket. Any person desiring a public

hearing on any petition being processed in accordance with the emergency waiver procedures must notify FRA of such request in their comments submitted to the docket. Interested persons may submit their comments using any of the following methods:

(1) E-mail to FRA at *RRS.Correspondence@dot.gov*;

(2) Fax to FRA at 202–493–6309; or

(3) Hand deliver or expedited delivery to the Docket Clerk, Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590 or electronically via the internet at *http://www.regulations.gov*.

All communications concerning any petition in the Emergency Relief Docket should identify the appropriate docket number (e.g., Docket Number FRA–2008–0009).

Anyone is able to search all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 665, Number 7, Pages 19477–78). The statement may also be found at *http://www.dot.gov/privacy.html*.

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

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E8–24379 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0099]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Otto Strassburg, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4161; or e-mail: *joe.strassburg@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Approval of Underwriters for Marine Hull Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0517.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Foreign and domestic applicants will be required to submit financial data upon which MARAD approval would be based.

Need and Use of the Information: This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

Description of Respondents: Marine insurance brokers and underwriters of marine insurance.

Annual Responses: 62 responses.

Annual Burden: 46 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp*.

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: October 7, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–24362 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0098]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Albert Bratton, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5769; or e-mail: *albert.bratton@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Determination of Fair and Reasonable Rates for Carriage of Agriculture Cargoes on U.S.-Flag Commercial Vessels.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0514.

Form Numbers: MA–1025, MA–1026, and MA–172.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This data collection requires U.S.-flag operators to submit

vessel-operating costs and capital costs data to MARAD officials on an annual basis.

Need and Use of the Information: This information is needed by MARAD to establish fair and reasonable guideline rates for carriage of specific cargoes on U.S. vessels.

Description of Respondents: U.S. citizens who own and operate U.S.-flag vessels.

Annual Responses: 25 responses.

Annual Burden: 600 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp*.

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: October 7, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–24363 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2008 0100]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before December 15, 2008.

FOR FURTHER INFORMATION CONTACT: Anne Dougherty, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5469; or e-mail: *anne.dougherty@dot.gov*.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title of Collection: Information to Determine Seamen's Re-employment Rights—National Emergency.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0526.

Form Numbers: None.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: This collection is needed in order to implement provisions of the Maritime Security Act of 1996. These provisions grant re-employment rights and other benefits to certain merchant seamen serving aboard vessels used by the United States during times of national emergencies. The Maritime Security Act of 1996 establishes the procedures for obtaining the necessary MARAD certification for re-employment rights and other benefits.

Need and Use of the Information: MARAD will use the information to determine if U.S. civilian mariners are eligible for re-employment rights under the Maritime Security Act of 1996.

Description of Respondents: U.S. merchant seamen who have completed designated national service during a time of maritime mobilization need and are seeking re-employment with a prior employer.

Annual Responses: 10 responses.

Annual Burden: 10 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT (or EST), Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp*.

Authority: 49 CFR 1.66.

By order of the Maritime Administrator.

Dated: October 7, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–24364 Filed 10–14–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 9, 2008.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 14, 2008 to be assured of consideration.

United States Mint

OMB Number: 1525–0013.

Type of Review: Revision.

Title: Application for Commercial Product License and Application for Intellectual Property Use.

Forms: 3044, 3045.

Description: The application forms allow individuals and business entities to apply for Non-product License or Commercial Product License to use United States Mint intellectual property and trademark and copyright materials for products.

Respondents: Businesses or other for-profit institutions.

Estimated Total Reporting Burden: 131 hours.

Clearance Officer: Yvonne Pollard (202) 354–6784, United States Mint, 799 9th Street, NW., 4th Floor, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–24531 Filed 10–14–08; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 9, 2008.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 14, 2008 to be assured of consideration.

Federal Consulting Group

OMB Number: 1505–0186.

Type of Review: Extension.

Title: Customer Satisfaction Measure of Government Websites.

Description: The objectives of surveying citizen users of federal agency websites are to: (1) Provide information for improving the quality of and satisfaction with agency websites: (2) ensure continuous assessment and improvement capabilities; (3) benchmark results against other agencies and private companies; (4) determine how different types of changes to the websites will impact future citizen behaviors; and (5) make the agencies part of a quarterly E-Government customer satisfaction benchmark and annual index for all measured Federal Government activities.

Respondents: Individuals and households; Business or other-for-profit; Not-for-profit institutions; Farms, Federal Government and State, Local or Tribal Govt.

Estimated Number of Respondents: 1,000,000.

Estimated Total Reporting Burden: 41,667 hours.

Clearance Officer: Ron Oberbillig (202) 504–3656, Federal Consulting Group, 1799 9th Street NW., Washington, DC 20239.

OMB Reviewer: Kimberly Nelson (202) 395–3787, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E8–24532 Filed 10–14–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Proposed Information Collection (Application for Annual Clothing Allowance) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility for clothing allowance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–0198'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 273–8664 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Annual Clothing Allowance (Under 38 U.S.C. 1162), VA Form 10–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–8678 is used to gather the necessary information to determine if a veteran is eligible for clothing allowance benefits due to a service connected disability. Clothing

allowance is payable if the veteran uses a prosthetic or orthopedic device (including a wheelchair) that tends to wear out or tear clothing or is prescribed medication for skin condition that causes irreparable damage to outer garments.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,120 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: October 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–24426 Filed 10–14–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Proposed Information Collection (Application for United States Flag for Burial Purposes) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for issuance of a burial flag for a deceased veteran.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0013'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for United States Flag for Burial Purposes, VA Form 21–2008.

OMB Control Number: 2900–0013.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2008 is used to determine a family member or friend of a deceased veteran eligibility for issuance of a burial flag.

Affected Public: Individuals or households, Federal Government and State, Local or Tribal Government.

Estimated Annual Burden: 162,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

Dated: October 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–24423 Filed 10–14–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Proposed Information Collection (Architect—Engineer Fee Proposal) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information used to notify contractors of available work, solicit and evaluate bids, and monitor work in progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–0208'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Stout (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the

information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Architect—Engineer Fee Proposal, VA Form 10–6298.

b. Daily Log (Contract Progress Report—Formal Contract), VA Form 10–6131.

c. Supplement Contract Progress Report, VA Form 10–61001a.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstract:

a. An Architect-engineering firm selected for negotiation of a contract with VA is required to submit a fee proposal based on the scope and complexity of the project. VA Form 10–6298 is used to obtain such proposal and supporting cost or pricing data from the contractor and subcontractor.

b. VA Forms 10–6131 and 10–6001a are used to record data necessary to assure the contractor provides sufficient labor and materials to accomplish the contract work. VA Form 10–6131 is used for national contracts and VA Form 10–6001a is used for smaller VA Medical Center station level projects and as an option on major projects before the interim schedule is submitted.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 5,341 hours.

a. VA Form 10–6298–1,000.

b. VA Form 10–6131–3,591.

c. VA Form 10–6001a–750.

Estimated Average Burden Per Respondent

a. VA Form 10–6298–4 hours.

b. VA Form 10–6131–12 minutes.

c. VA Form 10–6001a–12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. VA Form 10–6298–250.

b. VA Form 10–6131–17,955.

c. VA Form 10–6001a–3,750.

Dated: October 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–24424 Filed 10–14–08; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0670]

Proposed Information Collection (Fiduciary Statement in Support of Appointment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant qualification as a fiduciary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 15, 2008.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0670'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Fiduciary Statement in Support of Appointment, VA Form 21–0792.

OMB Control Number: 2900–0670.

Type of Review: Extension of a currently approved collection.

Abstract: Individual's seeking appointment as a fiduciary of VA beneficiaries complete VA Form 21–0792. VA uses the data collected to determine the individual's qualification as a fiduciary and to inquire about his or her credit and criminal background.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,500.

Dated: October 8, 2008.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E8–24421 Filed 10–14–08; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
October 15, 2008

Part II

Department of Agriculture

Rural Utilities Service
Rural Business-Cooperative Service
Rural Housing Service

7 CFR Parts 1703, 1780, 3570 et al.
Rural Development Grants; Proposed Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Business-Cooperative Service

Rural Housing Service

7 CFR Parts 1703, 1780, 3570, 4280, 4284, and 5002

RIN 0570–AA68

Rural Development Grants

AGENCIES: Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: Rural Development, a mission area within the U.S. Department of Agriculture, is proposing a unified grant platform for enhanced delivery of eight existing Rural Development grant programs—Community Facility; Distance Learning and Telemedicine; Economic Impact Initiatives; Renewable Energy Systems and Energy Efficiency Improvement Projects; Rural Cooperative Development; Tribal College; Value-Added Producer; and Water and Waste Disposal Facilities. This proposed rule would eliminate or revise the grant regulations for the eight existing programs and consolidate them under a new, single regulation.

DATES: Comments on the proposed rule must be received on or before December 15, 2008. The comment period for the information collection under the Paperwork Reduction Act of 1995 continues through December 15, 2008.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., 7th Floor address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Foore, Rural Development, Business and Cooperative Programs, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 3201, Washington, DC 20250–3201; *e-mail*: *Michael.Foore@wdc.usda.gov;* telephone (202) 690–4730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been reviewed under Executive Order (EO) 12866 and has been determined to be significant by the Office of Management and Budget. The EO defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO.

The Agency conducted a qualitative benefit-cost analysis to fulfill the requirements of Executive Order 12866. The Agency has identified potential benefits to the prospective grantee and to the Agency. These benefits are associated with the increase in program transparency, Administrative flexibility, and increased efficiency in delivering the programs. While unable to quantify any costs or benefits associated with this rulemaking, the agency believes that the overall effect of the rule may be beneficial.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 1995 (UMRA) of Public Law 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, Rural Development generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

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

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.,* an Environmental Impact Statement is not required. Grant applications will be reviewed individually to determine compliance with NEPA.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Department of Agriculture's National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 13132, Federalism

It has been determined, under Executive Order 13132, Federalism, that this proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the proposed rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies

that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

In compliance with the RFA, Rural Development has determined that this action will not have a significant economic impact on a substantial number of small entities. Rural Development made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

Executive Order 12372, Intergovernmental Review of Federal Programs

Rural Development grants are subject to the Provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Rural Development Programs and Activities,'' available in any Rural Development office, on the Internet at *http://www.rurdev.usda.gov/regs*, and in 7 CFR part 3015, subpart V.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development in the development of regulatory policies that have tribal implications or preempt tribal laws. Rural Development has determined that the proposed rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and the Indian tribes. Thus, the proposed rule is not subject to the requirements of Executive Order 13175.

Programs Affected

The Catalog of Federal Domestic Assistance Program numbers assigned to this program are 10.766, Community Facilities Loans and Grants; 10.855, Distance Learning and Telemedicine Loans and Grants; 10.766, Economic Impact Initiatives Grants; 10.775, Renewable Energy Systems and Energy Efficiency Improvements Program; 10.771, Rural Cooperative Development Grants; 10.352, Value-Added Producer Grants; and 10.760, Water and Waste Disposal Loans and Grants (Section 306a); and 10.221, Tribal College Educational Equity Grants.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, Rural Development will seek OMB approval of the reporting and recordkeeping requirements contained in this proposed rule and hereby opens a 60-day public comment period.

Title: Rural Development Grants.

Type of Request: New collection.

Abstract: Rural Development is implementing a new consolidated grant platform. The new grant platform would combine the following existing grant regulations into a consolidate rule: (1) The Community Facility Program, (2) the Distance Learning and Telemedicine Program; (3) the Economic Impact Initiatives Program; (4) the Rural Cooperative Development Program, (5) the Tribal College Grant Program, (6) the Value-Added Producer Program, (7) the Water and Waste Disposal Facilities Program, and (8) the Renewable Energy Systems and Energy Efficiency Improvement Program (now known as the Rural Energy for America program). These programs provide grants for a variety of projects intended to assist and improve rural America.

The information required under the proposed rule is similar to much of the information currently being required under the separate regulations. Under these separate regulations, the current information being collected is approved under OMB control numbers as follows:

0570–0006 (Rural Cooperative Development Grants).
0570–0039 (Value-Added Producer Grants).
0570–0050 (Renewable Energy Systems and Energy . Efficiency Improvement Grants).
0572–0096 (Distance Learning and Telemedicine).
0572–0121 (Water and Waste Loan and Grant Program).
0575–0173 (Community Facilities Grants).

The proposed rule creates a single set of common forms that applicants can use across all eight programs, thereby creating efficiencies in reporting.

The collection of information is vital to Rural Development to make wise decisions regarding the eligibility of projects and applicants in order to ensure compliance with the regulations and to ensure that the funds obtained from the Government are used appropriately (i.e., being used for the purposes for which the grant funds were awarded). In sum, this collection of information is necessary in order to implement the consolidated grant regulation being proposed.

The following estimates are based on the average over the first three years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.8 hours per response.

Respondents: Rural developers, farmers and ranchers, rural businesses, public bodies, local governments, institutions of higher learning, hospitals and medical facilities, Indian tribes, agricultural producers groups, farmer and rancher cooperatives, independent producers, majority controlled producer-based businesses, private corporations, non-profit organizations, rural electric cooperatives, public power entities, faith-based organizations, and incorporated organizations and partnerships.

Estimated Number of Respondents: 2.045.

Estimated Number of Responses per Respondent: 4.8.

Estimated Number of Responses: 24,650.

Estimated Total Annual Burden (hours) on Respondents: 118,802.

Copies of this information collection may be obtained from 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 20250–0742 or by calling (202) 692–0043.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of the new Rural Development 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, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this proposed rule will be summarized and

included in the request for OMB approval. All comments will also become a matter of public record.

E-Government Act Compliance

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

I. Background

Rural Development proposes a unified platform for delivery of eight existing Rural Development grant programs—Community Facility; Distance Learning and Telemedicine; Economic Impact Initiatives; Renewable Energy Systems and Energy Efficiency Improvement Projects (now known as the Rural Energy for America program); Rural Cooperative Development; Value-Added Producer; Water and Waste Disposal Facilities; and Tribal College. These programs are administered by the Rural Housing Service (Community Facilities, Economic Impact Initiatives, Tribal Grants), Rural Utilities Service (Distance Learning and Telemedicine, Water and Waste Disposal Facilities), and Rural Business-Cooperative Service (Rural Cooperative Development, Value-Added Producer, Rural Energy for America). Collectively, Rural Development's programs work together to assist in building and maintaining entire, sustainable rural communities.

For the reasons cited below, the Agency is proposing to incorporate eight of its 39 existing grant programs into this proposed new platform.

First. In selecting grant programs for inclusion in the proposed consolidated grant program, the Agency's two principal priorities are to include (1) grant programs associated with programs being included in the consolidated guaranteed loan rule and (2) grant programs that are representative of both State-allocated grant programs and nationally-competed grant programs, which are the two main types of grant programs administered by Rural Development.

As such, three of the seven grant programs are being proposed for inclusion because their guaranteed loan programs are being included in the Agency's new guaranteed loan program consolidating four of the Agency's guaranteed loan programs. These three programs are: Community Facilities, Water and Waste Disposal, and Rural Energy for America.

The Community Facilities and Water and Waste Disposal grant programs are both State-allocated grant programs, while the Rural Energy for America grant program is a nationally-competed grant program. To ''round these out,'' the Agency is proposing to add three additional nationally-competed grant programs—Rural Cooperative Development grants, Value-Added Producer grants, and Distance Learning and Telemedicine grants.

The Agency is proposing to include the Economic Impact Initiative grant program because it is administered under the same regulation as Community Facilities.

Second. The Agency is proposing to include Tribal College grants. As mentioned elsewhere in this preamble, the Tribal College grants program is neither a State-allocated or nationally-competed grant program. However, it does rely on portions of the Community Facilities grant program for its administration requirements. Because the proposed rule would eliminate the Community Facilities grant rule once the proposed rule is finalized, the Tribal College grant program would no longer have a grant regulation for its administration. Thus, the Agency was faced with two options—incorporate the Tribal College grant program into the proposed rule or develop a new regulation specific to Tribal College grants. The Agency believes that it makes more sense to include Tribal College grants in the new rule, then to develop a completely separate regulation for that one specific grant program.

As noted later in this preamble, the Agency is seeking specific comment on the grant programs being proposed for inclusion in the consolidated grant rule. Please see section II.C of this preamble.

The purpose of this proposed rule is to initiate the process of developing a single regulation covering all grant programs of the Rural Development Mission Area. Given the logistical and administrative challenges for the Agency and the stakeholders associated with such a consolidation, the Agency has decided to conduct this effort in stages. The proposed rule represents the first stage of this process. In this proposed rule stage the Agency selected grant programs to be included that: (1) Represented a cross section of the Agency's grant programs to ensure that the single regulatory platform being developed would be flexible enough the accommodate all of the Agency's grant programs; (2) corresponded to the loan guarantee programs that are covered by the regulatory consolidation taking place with respect to the Agency's loan guarantee programs (see 7 FR 52618, September 14, 2007); and (3) allowed whole regulatory parts of the current program regulations to be deleted.

After the Agency has the opportunity to determine the success of this initial phase of this regulatory consolidation effort, the Agency will decide whether it would be appropriate to continue to the next phase of incorporating additional grant programs into this regulatory platform and the schedule for the next phase. A key assumption the Agency has made in deciding to initiate the process of consolidating these regulations is that the platform is flexible enough to accommodate all of the various grant programs of the Rural Development Mission Area. Therefore, the Agency's decision to move forward to the next phase of this effort and to add the regulations of new grant programs to this platform will hinge on the degree the rulemaking process of this proposed rule either supports or challenges this assumption.

Under the unified grant platform, Rural Development will simplify, improve, and enhance the delivery of these grant programs across their service areas. The remainder of this section describes Rural Development's mission, the eight grant programs being aligned under the new platform, why the new platform is being proposed, and how the new platform will work.

A. Rural Development's Mission

By statutory authority, Rural Development is the leading Federal advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, venture capital, and technical support that enables rural communities to prosper and supports them in the dynamic global environment defined by the Internet revolution, and the rise of new technologies, products, and markets.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, and loan guarantees) and technical assistance to help enhance the quality of life and provide the foundation for economic development in rural areas. To improve the delivery of this financial support for all of its programs and thereby enhance its mission, Rural Development in February 2006 initiated the Delivery Enhancement Task Force (DET). The DET is working to develop consolidated program delivery platforms.

This proposed rulemaking presents the Agency's proposed consolidated

grant platform. The Agency has already published a proposed rule in support of its unified guaranteed loan platform, which was published in the **Federal Register** on September 14, 2007 (72 FR 52618).

B. Current Grant Programs

The following paragraphs describe briefly the scope of each of the current programs with regard to eligible projects and applicants.

Community Facilities Grant Program. The Community Facilities grant program provides grants to develop essential community facilities in rural areas. However, eligible utility-type service facilities, such as telecommunications and hydroelectric, that serve both rural and non-rural areas can be located in either rural or non-rural areas. Grant funds may be used to construct, enlarge, or improve community facilities for health care, public safety, and public services. This can include costs to acquire land needed for a facility, pay necessary professional fees, and purchase equipment required for its operation.

Eligible applicants for community facilities grants are public bodies, such as municipalities, counties, districts authorities, or other political subdivisions of a State; non-profit corporations and associations, and Federally-recognized tribes. Further, applicants must have the legal authority to own, construct, operate, and maintain the proposed facility.

The amount of grant assistance provided under this program must be the minimum amount sufficient for feasibility which will provide for facility operation and maintenance, reasonable reserves, and debt repayment. As statutorily required, grants may be made up to 75 percent of the cost of developing essentially community facilities. Recently, these grants have averaged $29,916, which is approximately 7 percent of the average costs of the projects that the grants are funding.

Economic Impact Initiatives Grant Program. This program is administered under the same regulations as the Community Facilities grant program, but provides grants to rural communities with extreme unemployment and severe economic depression. In addition, the essential community facility must be located in a rural community where the ''not employed rate'' is greater than the percentage specified in section 306(a)(20) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(20)(B)). (The ''not employed rate'' is the percentage of individuals over the age of 18 who reside within the community and who are ready, willing, and able to be employed but are unable to find employment, as determined by the department of labor of the State in which is the community is located.)

Notwithstanding the above, eligible applicants are otherwise the same as under the Community Facilities grant program. Eligible projects are also the same as under the Community Facilities grant program.

Under this program, the minimum grant amount awarded is that amount needed to achieve financial feasibility for the project. Recently, these grants have averaged $42,890, which is approximately 19 percent of the average costs of the projects that the grants are funding.

Tribal College Grant Program. The Tribal College grant program is designed to enhance educational opportunities at the Tribal colleges and universities designated as the 1994 Land-Grant Institutions (1994 Institutions) by strengthening their educational programs. The program provides funding for essential community facilities and equipment for the Tribal colleges and universities.

To be eligible to receive a grant under this program, the applicant must be one of the Tribal colleges or universities designated as the 1994 Institutions. Grant funds are disbursed in an attempt to provide an equal distribution of funds to each of the 1994 Institutions when possible. Recently, these grants have averaged $572,837, which is approximately 32 percent of the average costs of the projects that the grants are funding.

Distance Learning and Telemedicine Grant Program. The purpose of the Distance Learning and Telemedicine (DLT) Loan and Grant program is to encourage and improve telemedicine services and distance learning services in rural areas through the use of telecommunications, computer networks, and related advanced technologies by students, teachers, medical professionals, and rural residents.

To be eligible to receive a grant under this program, the applicant must be legally organized as an incorporated organization or partnership, an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c), a state or local unit of government, a consortium, as defined in § 1703.102, or other legal entity, including a private corporation organized on a for profit or not-for profit basis. In addition, each applicant must provide written evidence of its legal capacity to contract with the Agency to obtain the grant, loan and grant combination, or the loan, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency in its own behalf.

As implemented by the program office, an applicant is responsible for providing at least 15 percent of the grant amount requested and the minimum amount of a grant under this program is $50,000. Recently, these grants have averaged $294,950, which is approximately 60 percent of the average costs of the projects that the grants are funding.

Renewable Energy Systems and Energy Efficiency Improvement Grant Program. The current Renewable Energy Systems and Energy Efficiency Improvement grant program provides grants for the purchase and installation of renewable energy systems and energy efficiency improvements. Eligible applicants are farmers, ranchers, and rural small businesses who can demonstrate financial need, as determined by the Agency.

The amount of the grant made available to an eligible project cannot exceed 25 percent of total eligible project costs, as required by the authorizing statute. Currently, the program office sets the minimum amount of a grant at $2,500 and the maximum amount at $500,000 for renewable energy systems and $2,500 and $250,000, respectively, for energy efficiency improvement projects. Unlike the 25 percent limitation, these minimum and maximum grant amounts are not statutorily specified, but are set by the Agency in implementing the program. Recently, these grants have averaged $35,703, which is approximately 17 percent of the average costs of the projects that the grants are funding.

Rural Cooperative Development Grant Program. The Rural Cooperative Development grant program provides grants for the development or continuation of the cooperative development center concept. Grant funds and matching funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

- Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.
- Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

• Providing training and instruction for the purpose of cooperative development.

• Providing loans and grants for the purpose of cooperative development in accordance with the annual Notice of Solicitation of Applications and applicable regulations.

• Providing technical assistance, research services and advisory services for the purpose of cooperative development.

Applicants eligible for rural cooperative development grants are non-profit organizations and institutions, including institutions of higher education. Public bodies are not eligible to receive grants.

Under the current Rural Cooperative Development grant regulation, grant funds may be used to pay up to 75 percent (95 percent where the grantee is a 1994 Institution) of the cost of establishing and operating centers for rural cooperative development. Applicants must verify in their application that all matching funds are available for the time period of the grant. Recently, these grants have averaged $189,000, which is approximately 58 percent of the average costs of the projects that the grants are funding.

Value-added Producer Grant Program. The purpose of this program is to provide grants to enable producers to develop businesses that produce and market value-added agricultural products, including the development of strategies, creation of marketing opportunities, and development of business plans. The program distinguishes between planning grants and working capital grants. Grant funds for planning grants may be used for such purposes as, but not necessarily limited to: Obtaining legal advice and assistance; conducting a feasibility study; developing a business plan; and developing a marketing plan. Grant funds for working capital grant may be used for such purposes as, but not necessarily limited to: Designing or purchasing an accounting system, paying for salaries, utilities, and rental office space; and purchasing inventory, office equipment, and office supplies.

Applicants eligible for grants under this program are independent producers, agricultural producer groups, farmer or rancher cooperatives, and majority-controlled producer-based business ventures. Except for independent producers, all other applicants must be entering an emerging market in order to be eligible.

As required by its authorizing statute, grant funds may be used to pay up to 50 percent of the costs for carrying out eligible projects. Recently, these grants have averaged $150,000, which is approximately 50 percent of the average costs of the projects that the grants are funding.

Water and Waste Disposal Facilities Grant Program. The Water and Waste Disposal Facilities grant program provides grants to develop water and wastewater systems, including solid waste disposal and storm drainage, in rural areas and to cities and towns with a population of 10,000 or less. Example projects include construction of water lines, pumping stations, wells, storage tanks, and sewage treatment facilities.

Eligible applicants for water and waste disposal facilities grants are public bodies, such as municipalities, counties, districts authorities, or other political subdivisions of a State, territory, or commonwealth; non-profit organizations, such as corporations and associations; Indian tribes on Federal and State reservations or other federally-recognized Indian tribes. Further, applicants must have the legal authority to own, construct, operate, and maintain the proposed facility.

As required by its authorizing statute, grant funds are limited to no more than 75 percent of the Agency eligible project development costs. As implemented by the program office, grant funds are limited to: (1) No more than 75 percent of the Agency eligible project development costs when the median household income of the service area is below the higher of the poverty line or 80 percent of the state non-metropolitan median income and the project is necessary to alleviate a health or sanitary problem and (2) no more than 45 percent of the Agency eligible project development costs when the median household income of the service area exceeds 80 percent of the state non-metropolitan median income but is not more than 100 percent of the statewide non-metropolitan median household income. Recently, these grants have averaged $663,190, which is approximately 20 percent of the average costs of the projects that the grants are funding.

How the Current Programs Work

The grant programs being included in today's proposed rulemaking have many similarities, with a few major differences. A major difference between seven of the eight grant programs is whether the grant program is administered as a Nationally-competed grant program or a State-allocated grant program. The eighth grant program, Tribal College grants, is a program with a small statutorily defined set of beneficiaries.

The following paragraphs provide an overview of how the Nationally-competed and State-allocated grant programs are currently implemented.

Nationally-competed grant programs. The following paragraphs describe how the Agency currently administers its nationally-competed grant programs, four of which are being consolidated under this proposed rule—Distance Learning and Telemedicine, Renewable Energy Systems and Energy Efficiency Improvement (now known as the Rural Energy for America Program), Rural Cooperative Development, and Value-added Producer.

As it currently administers its nationally-competed grant programs, the Agency typically publishes a **Federal Register** notice announcing that it is accepting applications for the program, either as a Notice of Solicitation of Application (NOSA) or a Notice of Funding Availability (NOFA). The primary purpose of this notice is to alert the public to the opening of a period during which the Agency will accept applications for the program. This creates a ''window'' for submitting applications.

The amount and type of information contained in these NOSAs and NOFAs varies from program to program and may vary greatly year to year. Most notices include information on applicant and project eligibility, application submittal and content requirements, minimum and/or maximum grant amounts, and project priority categories and scoring.

Under the current administration of the nationally-competed grant programs, applications are either submitted to a Rural Development State Office or to the Rural Development National Office, depending on the program, for review, evaluation, and scoring. For most of the nationally-competed grant programs, the applicant will receive a letter from the Agency acknowledging receipt and confirmation that a full application was received. If an incomplete application is received, the Agency notifies, for some nationally-competed grant programs, the applicant as to what information is missing and the applicant has a set period of time in which to provide the missing information. For other nationally-competed grant programs, however, if an incomplete application is received, the Agency does not go back to the applicant for the missing information. This is done because some nationally-competed grant programs receive a sufficient number of complete applications to use all of the funds in a fiscal year and, accordingly, the Agency does not pursue incomplete applications. If this is the situation, the

NOSA or NOFA indicates this to the public.

As noted above, the nationally-competed grant programs provide a window for which applications are accepted. This results generally in a one time review and then scoring and ranking of applications. As currently implemented, the Agency reviews an application upon its receipt to determine whether the applicant and project are eligible for that program. If the Agency determines that the applicant and/or project are ineligible, the Agency notifies the applicant of such determination. Applications that are determined to be eligible are scored and ranked by National Office program staff. Depending on the nationally-competed grant program, independent reviewers may be used to evaluate and score applications. In addition, the nationally-competed grant programs currently limit the Administrator's discretionary points that can be included in the scoring of applications to 10 percent or less of the total potential points that an application can score.

Based on this pool of applications, a nationally-competed grant program's National Office selects applications for funding. Applicants that are not selected due to a low priority rating are notified. The Agency then proceeds to work with the applicants selected for funding in order to make awards by the end of the Federal fiscal year.

In currently administering its nationally-competed grant programs, the Agency begins the process of obligating funds and making awards (disburse the grant) by sending the applicant a letter of conditions that must be agreed to before the Agency and the grantee enter into a binding agreement, such as a grant agreement.

Once the Agency has initiated funds disbursement, it monitors the grantee to ensure conformance with the terms and conditions of the grant agreement. Depending on the nationally-competed grant program, the grantee is currently required to submit reports to the Agency during the grant period. Once the project has been completed, the Agency closes out the grant. If a grantee violates the terms and conditions of the grant agreement, the Agency takes appropriate steps, including, depending on the severity of the violation, the suspension or termination of the agreement.

State-allocated grant programs. These paragraphs describe how the Agency currently administers its State-allocated grant programs, three which are being consolidated under this proposed rule—Community Facilities, Economic Impact Initiatives, and Water and Waste Disposal Facilities. In contrast to the Nationally-competed grant programs, the Agency typically does not publish **Federal Register** (FR) notices for its State-allocated programs, but instead relies on other methods for alerting the public to the programs and the submittal of applications. In addition, the Agency tends to accept applications for State-allocated grant programs at any point during the course of the year.

Using Community Facilities (and the Economic Impact Initiatives) as an example of how the Agency currently implements a State-allocated grant program, applicants file a preapplication with requisite documentation and supporting information to the Rural Development field office. The Rural Development field office then reviews the package for completeness of the documentation and for applicant and project eligibility. If needed, the Rural Development field office will request the opinion of the Office of General Counsel on the applicant's legal existence and authority to perform the proposed project.

As currently being administered, the Rural Development field office submits a copy of the application package to the Rural Development State Office with a letter of recommendation. The Rural Development State Office reviews the package and notifies the Rural Development field office of its findings. If an application is determined to be ineligible, the Rural Development field office notifies the applicant, who has the right of appeal.

If an application is determined to be eligible, the Rural Development field office provides the applicant with the necessary forms and instructions for filing a complete application. For example, the Community Facilities program requires Form SF 424, a preliminary architecture report, a financial feasibility report, and environmental information. If the project is small, the architectural and financial feasibility reports may not be required.

If there is a concern (e.g., incomplete, not properly assembled) with the application, the Rural Development field office will notify the applicant as to what information is needed. If the applicant fails to submit a complete application by the date specified by the Rural Development State Office or in an otherwise timely manner, the Agency may discontinue processing the application. If the application is complete, the Agency will notify the applicant as to eligibility and anticipated availability of funds.

Completed applications returned to the Rural Development field office are evaluated. The Rural Development field office reviews the application package for the amount of grant funds allowed and scores the application for selection priority. As currently implemented, applications may also receive discretionary points from the State Director.

Generally, the Rural Development State Office authorizes grant assistance to those eligible applicants with the highest priority score. Other factors, however, may enter into selecting applications for funding including the amount of funding being requested relative to available funds and whether the application is for the continuation of a project. Applicants who are eligible for funding, but cannot be funded due to lack of Agency funds are advised by the State Office that grant assistance is not available. If, based upon the application, it appears that funds will be available for the project within a feasible period of time, the Agency notifies the applicant that the application will be retained until funding becomes available. If, based upon the application, it is not likely that the project will be funded in the near future, the Agency returns the application to the applicant at the end of the fiscal year.

As for nationally-competed grant programs, the process the Agency currently uses to obligate funds and make awards (disburse the grant) for State-allocated grant programs begins with the Agency sending the applicant a letter of conditions that must be agreed to before the Agency and the grantee enter into a binding agreement, such as a grant agreement.

Once funds have been disbursed, the Agency monitors the grantee to ensure conformance with the terms and conditions of the grant agreement. Depending on the State-allocated grant program, the grantee is currently required to submit reports to the Agency during the grant period. Once the project has been completed, the Agency closes out the grant. If a grantee violates the terms and conditions of the grant agreement, the Agency takes appropriate steps, including, depending on the severity of the violation, the suspension or termination of the agreement.

C. Goals of the New Platform

The grant programs that are being combined under the proposed new platform were developed separately, and are administered independently of each other. The platform being proposed seeks to achieve the following objectives:

- Reduce the burden to applicants;

• Increase the efficiency in delivering grant programs; and

• Improve the Agency's program monitoring and reporting capabilities.

Reduce the burden to applicants. The new platform can potentially reduce the burden to applicants in several ways.

First. When applicants seek grants under more than one of the programs, they are required to learn how to fill out multiple forms. This is inefficient and costly to the applicants and makes the programs less attractive to the applicants. By combining common elements into a single subpart, the new platform can reduce the burden to applicants applying to multiple grant programs covered in this regulation.

Second. Many grant programs receive applications from applicants or projects that are ineligible. In some cases, the applicant spends a significant amount of resources in putting together such applications. To help reduce the number of such applications, the new platform incorporates a voluntary preapplication process that applicants can use to help assess whether they and their projects are eligible. By getting an early assessment of eligibility, the Agency believes that fewer ''non-eligible'' applications will be submitted, thereby saving the applicant expenses in assembling and submitting a complete application.

Third. Under the new platform, applicants would be allowed to submit applications, including preapplications, to any Rural Development office or on-line through grants.gov. Allowing applicants to submit applications to any Rural Development office, including Rural Development field offices, provides applicants with additional submittal options than under the current programs, which specify locations where applications are to be submitted. For some applicants, the ability to submit applications to their local Rural Development field office will be more convenient. In addition, to the extent that this platform can leverage and further promote the utilization of field offices, it will serve to improve communication between the Agency and the applicants.

Increase efficiency in delivering grant programs. There are several ways in which the new platform will help the Agency improve the efficiency in delivering the grant programs.

First. The new platform would improve the work flow for the National and State Rural Development office personnel. The current delivery platform creates significant processing peaks and valleys in the delivery of the grant programs. The new platform seeks to ''smooth out'' these peaks and valleys through an open application period. This will also allow the Agency to better manage staffing requirements and provide administrative consistency among the various grant programs.

Second. The new platform improves program delivery efficiency by ''separating'' the application process from the funding process. Currently, consideration of grants waits until funds are made available through the appropriations process. This creates uncertainty in work flow and, at times, compresses the effort and resources required to review applications and make decisions into a very short timeframe.

The new platform incorporates two different application submittal schemes. Under the first scheme, applications are accepted at any time. Under the second scheme, applications are submitted once each year. These processes will occur regardless of when funds are available and under what mechanism they are made available. By separating the application submittal and review process from funding availability, the Agency is creating a process that will allow both applicants and Agency staff to better manage their resources.

Third. The new platform would streamline the Agency's efforts in administering the grant programs. Maintaining separate sets of basic requirements creates complexity in administrative activities. For example, with each program administered under separate regulations, any change to basic requirements calls for multiple concurrences. Similarly, adding a new program requires the addition of a new set of basic requirements as these are not currently shared. The proposed combined platform will streamline basic grant requirements, allowing all the grant programs included in this regulation to reach a uniform functionality of process.

Further, when new programs are implemented under the current delivery platform, a new regulation is developed that, in many respects, addresses or adopts many of the same requirements. Time and effort are wasted in readdressing issues during the development of new program regulations leading to inefficient rulemaking and a delay in program implementation. The structure of the new platform provides for the addition of other Agency, or newly authorized, grant programs as needed without the addition of new sets of basic requirements. The common elements (proposed subpart A) of the proposed rule are intended to remain unchanged, while additional programs would be added to proposed subpart B.

Fourth. Having a common rule for multiple programs will be easier to administer, improve communication of basic program characteristics, and reduce confusion among both staff and the public. A common regulation will reduce the staff time, effort, and training necessary for issuing grants. Efficiencies will be realized as common program elements facilitate consolidation of information technology platforms and systems' maintenance cost. Internal management controls will improve with standardized servicing and oversight. Uniform processes will facilitate electronic commerce between Rural Development and its customers.

Improve the Agency's program monitoring and reporting capabilities. Building on the efficiency improvements under a common grants platform, monitoring and reporting program performance of grant recipients will be conducted in conformance with uniform standards. With standardized servicing and oversight, Agency staff will be better able to monitor grant recipients to the extent necessary to ensure that facilities are functioning in accordance with project performance goals.

Through the grantee's uniform standard semiannual performance reporting and a final performance report, the Agency will be able to compare actual accomplishments against the objectives and benchmarks stated in the project's performance plan. To account for the diversity in grant programs, additional grantee performance data may be needed for a thorough evaluation. Any special reporting requirements not specified in the rule or subsequent notices will be established in the Agency's letter of conditions provided to the grantee.

Project monitoring and report data will be captured and retained through the Agency's management information systems and data warehouse. Drawing on standardized collected data, the Agency will be able to generate more comprehensive program performance reports both within a program and comparisons across several programs. This will be especially useful where programs with common or complementary performance measures may have a compounded impact on a community's social and economic development.

D. The New Platform

By way of this rule, the Agency is initiating the process of developing a single regulation covering all 39 grant programs of the Rural Development Mission Area. For the grant programs listed in this regulation, the proposed

new platform simplifies, improves, and enhances the delivery of the grant programs. By applying the requirements shared among the eight grant programs included in this rule while maintaining required programmatic differences, this new structure will streamline the promulgation of regulations for new grant programs.

As noted earlier, the Agency is proposing to include eight grant programs within this proposed rule. Under the new platform, the common features of the programs are incorporated into a single subpart (subpart A), with program-specific features provided in a separate subpart (subpart B). While key features (e.g., applicant and project eligibility, funding) of the existing programs remain under the new platform, key differences can be found in applying for a grant, in the process in which applications are submitted, evaluated, and selected for funding, and in the manner in which notifications will be used to provide information to the public on the grant programs.

The following paragraphs address the new platform by examining the proposed delivery mechanisms, beginning with a discussion on the use of notifications under the new platform and concluding with grant close-out. Figure 1 illustrates the overall application process for grant programs with an application deadline. Figure 2 illustrates the overall application process for grant programs with an open application period.

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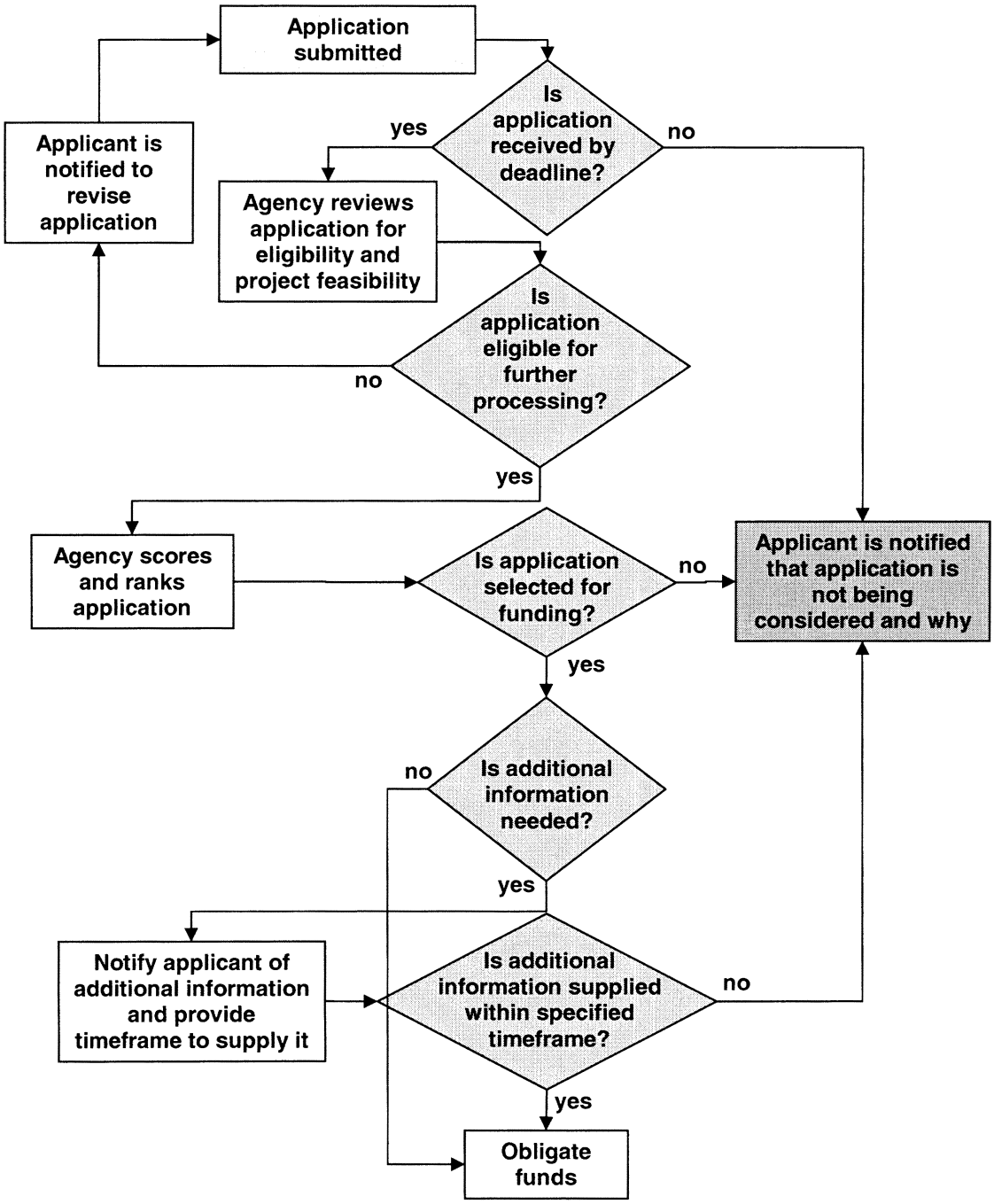

Figure 1. Application Process Flow Diagram for Grant Programs with a Specified Application Deadline

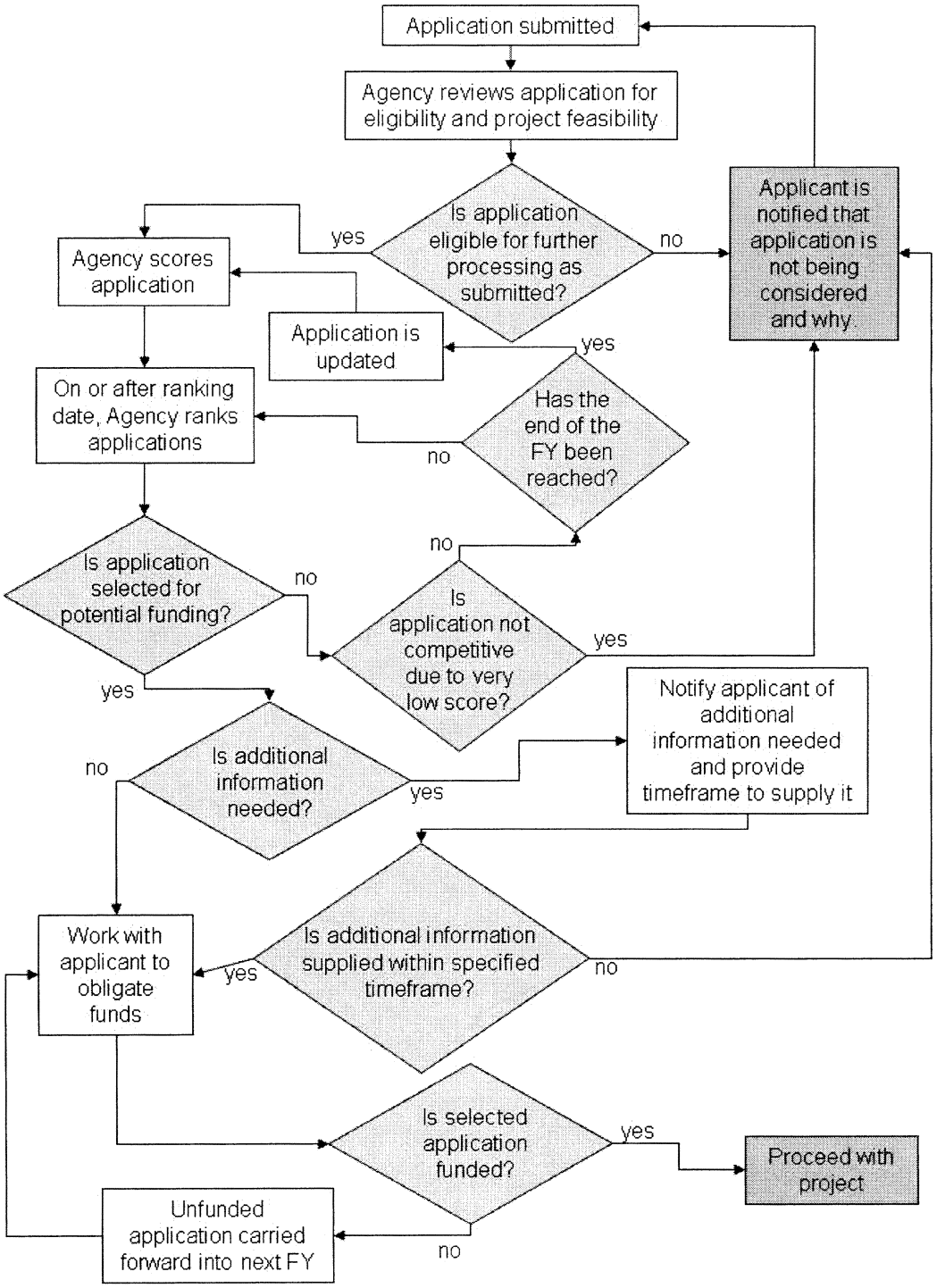

Figure 2. Application Process for Grant Programs with an Open Application Period

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1. *Notifications.* Under the new platform, the Agency will use notifications to provide information on program funding and on programmatic changes relevant to applications and to program administration. The primary notification method used to disseminate this information depends on whether the program is a Nationally-competed grant program or a State-allocated grant program. In addition, the timing of when the Agency issues a notification depends on the type of information the notification contains.

Funding. The Agency will issue notifications identifying the level of funds are available for each program and their minimum and maximum grant amounts.

The Agency may elect to provide additional funding information in these notifications. Such information may include, but would not be limited to:

- Type of award;
- Fiscal year funds;
- Approximate total funding;
- Approximate number of awards;
- Approximate average award;
- Floor of award range;
- Ceiling of award range;
- Budget period length; and
- Project period length.

For Nationally-competed grant programs, the primary notification method that the Agency will use will be a **Federal Register** notice. One or more notices may be necessary to do this. For State-allocated grant programs, the primary notification method will be through a link found on Rural Development's Web site *http://www.rurdev.usda.gov.* Funding information for both types of grant programs would also be available at any Rural Development office. The Agency will provide funding information on each program every fiscal year.

Programmatic changes. The Agency will also issue notifications that identify changes to a program that would affect the applicant or the applicant's application. These circumstances are discussed below.

- *Administrator and State Director priority categories.* Subpart A provides lists of Administrator and State Director priority categories. Administrator priority categories apply to both State-allocated grant programs and nationally-competed grant programs, while State Director priority categories apply only to State-allocated grant programs. Individual programs may elect to use any or all of the priority categories identified in subpart A in scoring applications, but would not be able to add to these lists (unless done through a change to the rule). Subpart B specifies the specific sets of Administrator and State Director priority categories that each program can use each year to score applications.

If a program office determines that a different set of priority categories (but still within the priority categories identified in subpart A) will be applicable for a given fiscal year, the Agency will issue a notification to announce the priority categories that will be used in scoring applications for that fiscal year.

- *Administrator and State Director points.* Subpart B identifies how points will be allocated for both Administrator and State Director priority categories for each of the grant programs. If a program office determines that a different allocation of these points is appropriate, whether or not in conjunction with a change in priority categories, then that program office would issue a notification, as applicable, to indicate the point allocation to be used in that fiscal year.
- *Additional reports.* A program office may determine that additional reports on project performance that are generally applicable across projects within the program are necessary in addition to those required under the proposed rule. In such instances, the Agency would issue a notification to the public.
- *Ranking dates.* A program office may elect to change one (or more) of the ranking dates specified in subpart B of the proposed rule. For example, a program office that has a specified ranking date (July 15) may determine that it is necessary to move the ranking date to earlier in the year because the program office has determined that additional time may be needed to rank the applications in order to ensure sufficient time to obligate funds. In such instances, the Agency would issue a notification to the public.
- *Application deadline.* For those programs with a specified application deadline, a program office may elect to change the application deadline date specified in subpart B of the proposed rule. For example, a program office that has a specified application deadline (March 1) may determine that it is necessary to move the application deadline to earlier in the year in order to better manage Agency resources and program funds. In such instances, the Agency would issue a notification to the public.

For changes in Administrator and State Director priority categories and/or points, the program office would issue the notification(s) at least 30 days prior to the first ranking date in the upcoming fiscal year or the application deadline, as applicable, to allow sufficient time for applicants to finish their applications. If multiple program offices seek to make these types of changes, the Agency may issue, where feasible, a single notification covering all of the affected programs rather than individual notifications for each of the affected programs. For other programmatic changes, the Agency would issue notifications on an as needed basis.

Finally, a program's eligibility requirements may change or the Agency may determine that certain types of projects are no longer eligible for grants or certain ineligible projects may become eligible. Such instances would require the Agency to change to the regulation. In order to help ensure the public is aware of such changes, the Agency may include such information in the programmatic change notifications discussed above.

Administrator approval. Under the new platform, State Directors would propose to the Administrator each year the minimum and maximum grant amounts for each State-allocated grant program included in this part. Upon approval from the Administrator, the Agency would then notify the public of the minimum and maximum grant amounts approved by the Administrator. Similarly, each State Director may propose to the Administrator changes in State Director priority categories and associated points for State-allocated grant programs included in this part. Upon approval from the Administrator, the Agency would then notify the public of the priority categories and associated points approved by the Administrator for each affected State-allocated program.

2. *Acceptance of Applications.* As noted above, Nationally-competed grant programs establish defined ''windows'' for when applications can be submitted and both types of programs (Nationally-competed and State-allocated) frequently specify the Rural Development office (field, State, National) to which applications are to be submitted. Under the new platform, the Agency is proposing to implement two application submittal schemes, depending on the needs of the individual program:

- An open application period; and
- A specified application deadline.

Under the open application period scheme, the Agency would accept applications at any time during the year. By accepting applications at any time, there would no longer be any ''window'' for when to submit an application. This feature eliminates the need for the public to wait on the Agency to publish **Federal Register** notices, or use other methods, to solicit applications. It is

important to note, however, that the Agency will still undertake activities to promote the various grant programs.

The second scheme (a specified application deadline) is similar to current Nationally-competed grant programs, but the date for application submittal would be fixed in the regulation in subpart B. By providing a date, the public will not have to wait for the Agency to publish a notice identifying when applications are due. This will allow applicants to plan for the preparation of their applications with certainty.

By accepting applications at any Rural Development office under either scheme, the Agency is seeking to make it more convenient for applicants to submit their applications. To the extent that this facilitates interaction between Rural Development staff and the applicants, the Agency expects better communication will occur. The Agency will implement internal procedures to ensure all applications are delivered to the appropriate Agency program office.

3. *Eligibility.* Under the current programs, Rural Development offices (National and State offices, as appropriate) determine both applicant and project eligibility based on the individual grant program's requirements. As described below, the proposed rule continues this determination process mainly unchanged.

Applicant eligibility is based on the applicant meeting the common requirements, which are citizenship and legal authority and responsibility, and program-specific criteria, which are contained in proposed subpart B. The proposed rule also identifies applicants who would be categorically ineligible. In terms of eligible and ineligible applicants, little has changed under the new platform compared to the current programs. In addition, these criteria cannot be voided under the exception authority provided in the proposed rule.

Project eligibility is based on the proposed project meeting criteria found in Subparts A and B, as applicable. Subpart A requires each project to meet the following criteria, as applicable and unless otherwise modified by a specific provision in subpart B for a program:

- Being primarily for the benefit of a rural area;
- For those projects and purposes that acquire or improve real or personal property, the applicant must be the owner of the property or have leasehold interest acceptable to the Agency in the property and control the revenues and expenses of the project, including operation and maintenance; and
- For projects and purposes that are determined by a service area, on the boundaries of the proposed service area meeting a non-discrimination criterion.

Projects that do not meet the applicable proposed criteria (as found in Subparts A and B, as applicable) would be ineligible under the new platform. In addition, these criteria (as found in subpart A and as may be modified in subpart B) cannot be voided under the exception authority provided in the proposed rule.

The applicable program-specific project eligibility requirements, which are located in subpart B, remain essentially unchanged for those of the current programs. Some differences are being proposed and these are discussed in section II of this preamble.

In addition to identifying eligible projects, the proposed rule identifies specific projects and purposes that are ineligible under all circumstances from receiving a grant. The Agency assembled this list from the list of ineligible projects and purposes identified in the regulations and associated program notices for the programs being included in the proposed rule. In addition, the Agency added the following projects and purposes as ineligible:

- Investment or arbitrage, or speculative real estate investment;
- Prostitution or projects generating income from activities of a prurient sexual nature;
- Any project eligible for Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended;
- Any project generating income from the sale of illegal drugs, drug paraphernalia, or any other illegal product or activity;
- Any project located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan; and
- Any other similar project or purpose that the Agency determines is ineligible for funding under this part and publishes in a **Federal Register** notice.

4. *Applying for a Grant.* All applicants would be required to submit an application. For some applicants (i.e., a government that is proposing a project that is for construction, land acquisition, or land development and that would require more than $100,000 of Federal funding), a preapplication would be required (as is currently the situation). For all other applicants, however, the submittal of a preapplication would be optional. The following paragraphs discuss briefly preapplications and applications.

Preapplications. The primary purpose of the preapplication is for the Agency to make an assessment as to both applicant eligibility and project eligibility. In addition, use of preapplications facilitates early communication between the Agency and the applicant. By reviewing preapplications, the Agency reduces the time and effort spent by applicants in preparing full applications where the applicant and/or project are clearly not eligible.

Applications. Because of the varying nature of the projects that are associated with the grant programs, the Agency has determined that the information to be included in a grant application should be program specific, as it is currently. The contents of grant applications will be made available to applicants through any Rural Development office, the Agency's Web site, or National Headquarters. The information associated with a grant application will not be significantly different than currently required under the current programs.

However, an applicant would be allowed to submit an application (including preapplications) to any Rural Development office. Under the current programs, applications are submitted to specified locations. As noted earlier, the Agency is proposing this change to make it more convenient for applicants to submit their applications and to foster communication between Rural Development staff and applicants.

Rather than identifying the specific documents that must accompany each application for each program in the regulation, the Agency would provide all the necessary forms and instructions in program-specific application packages. This proposed process is similar to the current process for several existing grant programs, but represents a change for those Nationally-competed programs where the regulations and/or **Federal Register** notice identify specifically what is required in each application under each of those programs. The Agency believes that implementing the proposed process for all grant programs affected by this rule will provide administrative flexibility to each program as well as consistency in implementation.

5. *Processing Applications.* The Agency would review each application for the determination of applicant and project eligibility and the likelihood of the project's feasibility. It is at this stage of the process that the Agency would

make the formal determination of eligibility, unless it has already been made.

In order to determine eligibility, the application must contain sufficient and necessary information to allow the Agency to make the eligibility determination. The Agency will also review the application for assessing whether or not the project is likely to be feasible. To further process an application for a project or purpose that is likely to be unfeasible would be an inefficient use of Agency resources. At the same time, the amount of information that is needed to make this assessment varies between programs because of the differing complexity of projects and purposes. The information provided to the applicant for preparation of an application will assist the applicant in identifying the amount of information necessary to allow the Agency to make this feasibility assessment.

When reviewing an application for applicant and project eligibility, if the Agency finds that there is insufficient information, including for example if a form has not been signed, to make an eligibility determination, the Agency will notify the applicant. Once an eligibility determination has been made, the Agency will notify the applicant. If the Agency determines that either the applicant or the project is ineligible, the applicant would have the right to appeal the decision to the National Appeals Division (NAD). The steps associated with eligibility under the new platform are essentially the same as under the current programs.

Similarly, if the Agency makes an assessment that a project is not likely to be feasible, the Agency will notify the applicant of its concerns. The applicant will then have the opportunity to address those concerns before the Agency continues processing the application.

For programs with open application periods, an application that is revised and resubmitted to the Agency will be processed at the next applicable ranking date for that program. For example, if a revised application is received on January 15, the Agency will consider it at the March 15 ranking date, which is the next applicable ranking date. For grant programs with a specified application deadline, each revised grant application will be processed by the Agency if it is received on or before the application deadline for that grant program. If such revised applications are not received by the specified application deadline for the grant program, the Agency will not process the application.

6. *Scoring Applications*. For those applications for which the applicant and project are eligible and the project is feasible (or is likely to be feasible), the Agency will continue processing the application by scoring it. The Agency will score applications on the basis of the information provided when the Agency receives the application. Thus, it is the responsibility of the applicant to provide all information necessary at the time of application for the Agency to score the application.

The Agency will score each application using a set of program-specific priority categories, a set of State Director priority categories, and a set of Administrator priority categories and their associated points that are specific to each grant program. State Director priority categories and points are only applicable to State-allocated grant programs. In addition, Administrator priority categories and points may be applied to State-allocated grant applications only when applications are submitted for the national pool of funds.

These sets of priority categories are identified in subpart B of the proposed rule. As noted earlier (Section I. D. 1.), the Agency may use a revised set of Administrator and State Director priority categories and point allocations through the issuance of a notification.

Priority Categories. As noted above, the Agency is distinguishing between program-specific priority categories and Administrator and State Director priority categories. Program-specific priority categories are those priority categories that the Agency must use in scoring each application for that grant program. In contrast, Administrator and State Director priority categories are not mandatory; that is, the Administrator and State Director are not obligated to use their specified priority categories in scoring applications. If the Administrator or State Director elects not to use their priority categories, then neither can affect the scoring of an application.

The specification of priority categories for the Administrator and the State Directors is a major difference from the current process. Currently, the Administrator and State Directors have significant discretion to reflect their priorities. In contrast, the proposed rule eliminates this discretionary aspect by specifying the sets of Administrator and State Director priority categories for each program that will be considered each year. This change provides the public with a much greater understanding of how their applications can be evaluated by the Administrator and the State Directors. Furthermore, these priority categories would be used each year, unless otherwise specified in a notification issued under proposed § 5002.15. Note that program-specific priority categories can only change, however, if the Agency subsequently revises subpart B of the regulation.

Points. Currently, the total available points vary considerably between grant programs. The Agency is proposing to standardize the total points (to 100) that can be awarded to an application under any of the grant programs. Standardizing point totals is intended to help the Agency administer the grant programs.

One difference from the current programs is the proposed Administrator and State Director points that could be awarded to an application. Except for the Community Facilities grant program, as discussed in the following paragraph, both State Director points and Administrator points would be each limited to 10 points (10 percent of the total potential points) and can only be awarded for the specific set of priority categories in effect for that program. In other words, the Administrator or State Director could not use discretionary categories to establish specific earmarks. Note that only State-allocated grant programs would be allowed to award points for State Director priority categories.

For the Community Facilities grant program, the Agency is proposing to limit Administrator points to 20 points (20 percent of the total potential points). The Community Facilities grant program applies to projects that are ''essential community facilities.'' The types of projects that may qualify as essential community facilities are very broad, much broader than any of the other grant programs being included in the new platform. This diversity of community facility projects presents unique challenges for meeting the overall goals of the program. The Agency believes, regarding these broad based programs, that it is appropriate to provide greater flexibility in order to meet the goals and objectives of the program. Therefore, the Administrator would be allowed to award up to 20 points for community facilities applications. As noted earlier, Administrator points may be applied to State-allocated programs only when the National Office makes the determination of which grant applications to fund from the national pool of funds.

As with the sets of Administrator and State Director priority categories, the procedures used for awarding Administrator and State Director points each year would be as specified in subpart B, unless a notification is issued as specified in proposed § 5002.15. The

maximum number of points that the Administrator and the State Director can award, however, can only be changed through a revision to the regulation.

Changes in Administrator and State Director priority categories and points. As noted earlier in this preamble, if there is a change in Administrator or State Director priority categories and/or point allocation to be considered for a particular year, the proposed rule allows the Administrator or State Director to change the priority categories and/or point allocation (but not the Administrator's or State Director's point total) contained in the rule by issuing an appropriate notification in a timely fashion. To illustrate the award of Administrator and State Director priority categories and points under the new platform, consider the following examples.

Examples. These examples are for State Director priority categories for community facility grants, which allow the State Director to award up to 10 points to an individual application. These examples are also illustrative of the award of State Director priority categories and points for other programs.

• *Example 1.* The Agency does not issue a notification for an upcoming fiscal year and an application meets each of the 10 priority categories listed in subpart A of § 5002.42(b)(2). In this situation, the scoring procedure specified in subpart B for community facility grants (§ 5002.101(f)(3)) would be used to score the application for awarding State Director points. The Agency determines that the application can be awarded full points for all 10 priority categories. This would total 100 points. However, because the rule limits the total number of State Director points to 10 points for any one application, this application would receive 10 State Director points.

• *Example 2.* The Agency issues a notification indicating that only four of the 10 State Director priority categories in subpart A will receive consideration. In this case, the notification also identifies the specific points to be awarded to the four priority categories, such that the total points to be awarded do not exceed 10 points. For example, Priority Category 6—up to 3 points; Priority Category 7—up to 3 points; Priority Category 8—up to 2 points; and Priority Category 9—up to 2 points. Note that in this example the point distribution totals 10. In evaluating this application, the Agency determines that the application should be awarded full points for Priority Categories 6, 7, and 8, but only one point for Priority Category 9. The application would, therefore, receive nine (9) State Director points.

7. *Award process for applications.* The Agency is establishing a consistent process for selecting applications for funding. The two main areas of the proposed award process are:

• Ranking of applications; and
• Selection of applications for funding.

In addition, the proposed rule addresses the disposition of applications not selected for funding.

Ranking of applications. For those grant programs that have an open application period, which would receive applications on a continuous basis, the Agency is establishing a process for ranking applications that sufficiently demonstrates competition for grant funds. To accomplish this, the Agency is proposing that all scored applications for a program be ranked by the Agency four times per year. The four proposed ranking dates are, in order of occurrence during the fiscal year, December 15, March 15, July 15, and August 15. If any of these dates fall on a weekend or a Federally-observed holiday, the affected ranking date would move to the next Federal business day. Further, as noted earlier in this preamble, a program may change one or more ranking dates in a fiscal year if it publishes a notification as specified in proposed § 5002.15.

The first three ranking dates were selected to provide an even spacing of ranking dates to help even out the work flow. The first date was selected with enough time after the beginning of the fiscal year and after the publication of any applicable notification for the upcoming fiscal year to allow applicants to prepare and submit an application to be considered during the first ranking period. The last date, August 15, was included because some programs need to obligate funds prior to the end of the fiscal year and this date provides sufficient lead time to accommodate such obligations. While only a month after the July 15 date, the Agency is including it because it provides additional time for applicants to submit applications for consideration during the current fiscal year.

Applications submitted after August 15 of a given fiscal year, however, will not be ranked until December 15 of the following fiscal year. In this situation, the Agency will retain these applications through the next ranking date (i.e., through December 15 of the following fiscal year). Such applications would be evaluated and scored based on that program's priority categories for the following fiscal year. Therefore, if a program's Administrator and/or State Director priority categories selected to score applications were to change between the current fiscal year and the next, applicants should consider whether their retained applications need to be resubmitted in order to better address the change in the program's selected Administrator and/or State Director priority categories.

It is important to note that the ranking dates for programs with an open application period are not the same as application deadlines. Under the new platform, applicants can submit applications for such programs at any time. Once the application is determined to be eligible, the Agency will rank the application on or after the next ranking date. Consider the following examples for grant programs with an open application period.

Example 1. Applicant A submits an application to the Agency on November 1, 2008. The Agency determines that the application is eligible for further processing on November 30, 2008. The Agency will rank the application on or after December 15, 2008.

Example 2. Applicant B submits an application to the Agency on December 16, 2008. The Agency determines that the application eligible for further processing on January 5, 2009. The Agency will rank the application on or after March 15, 2009.

Example 3. Applicant C submits an application to the Agency on August 17, 2009. The Agency determines that the application is eligible for further processing on September 23, 2009. The Agency will rank the application on or after December 15, 2009.

Example 4. Applicant D submits an application to the Agency on November 15, 2009. The Agency determines that the application is eligible on December 20, 2009, after the December 15 ranking date has passed. The Agency will rank Applicant D's application at the next scheduled ranking date after December 15, which would be, in this example, on or after March 15, 2010.

For grant programs that have a specified application deadline, such as the Distance Learning and Telemedicine grant program, either a single ranking date—July 15—or two ranking dates—March 15 and July 15—is being proposed, depending on the needs of the specific program. The July 15 date was selected to ensure sufficient time for the Agency to obligate funds to those applications selected for funding. As noted earlier in this preamble, a program office may determine that it is necessary to move the application deadline to earlier in the year in order to better manage Agency resources and program funds. In such instances, the

Agency would provide notification to the public.

Whether for a grant program with an open application period or for a grant program with a specified application deadline, applications that are ranked in a given fiscal year will be considered for selection for funding or for potential funding, as applicable, during that fiscal year. For grant programs with an open application period, this means that applications received early in the fiscal year will have a longer timeframe to be considered for selection for potential funding than those received later in the fiscal year.

Selection of applications for funding or potential funding. For all grant programs, the Agency will create, on or after each ranking date, a priority list of ranked applications from which to select applications for consideration for (potential) funding. In considering which applications to select for (potential) funding, the Agency will consider three basic criteria, which are discussed below, and any program-specific criteria, as specified in subpart B. For each application that is selected for (potential) funding, the Agency will so notify the applicant.

As noted in the previous paragraph, the Agency will consider three basic criteria selecting applications for (potential) funding. These criteria are: (1) Ranking, (2) availability of funds, and (3) other funding sources.

- *Ranking*. This refers to an application's place on the program's priority list, which is based on the score each application receives. Higher scoring applications would receive first consideration for (potential) funding. However, as discussed below for the two other basic criteria and as may be specified in subpart B for a specific program, a lower scoring application may be selected for (potential) funding ahead of a higher scoring application. For example, if there is insufficient funding for the higher scoring project, the Agency may pass over that project to fund a lower scoring project in order to fully expend the budget authority.
- *Availability of funds*. This refers to the size of the grant request relative to the program funds that remain available to the program during the fiscal year. In order for the Agency to better manage the availability of program funds, the Agency could select, under the new platform, a lower scoring application before an eligible, higher-scoring application when the higher scoring application:
- Would require grant assistance in an amount greater than the funds remaining in a particular funding period,
- Would require more than 25 percent of a State's allocated funds, or
- Would require more than 25 percent of a Nationally-competed grant program's funds.

In these situations, the Agency would notify the applicant associated with the higher scoring application and provide the applicant an opportunity to revise the amount of funds being requested in their application, provided the reduced funding request does not change the project's purposes and financial feasibility. The applicant would then be able to resubmit the application before the Agency selects the next highest scoring application for funding.

The Agency is proposing the 25 percent threshold for nationally-competed grant programs based on current practice in the Agency's water and waste disposal grant program. The Agency is willing to consider a different threshold. The Agency is concerned that too low of a threshold might create a situation, especially in smaller nationally-competed grant programs, where this provision could be used to override the selection of applications based on their scores. The Agency is also concerned that too high of a threshold might not be effective at limiting applications that commit too high a percentage of a fiscal year's available funding for a particular program. As stated later in this preamble, the Agency is requesting comment on this threshold level.

- *Availability of other funding sources*. This refers to whether Rural Development loans and other, non-Rural Development funding sources should be available to an applicant. If an applicant with a higher scoring application can accomplish the project using Rural Development loans or other non-Rural Development funding sources, the Agency may consider the next highest scoring application ahead of the higher scoring application.

Disposition of applications not selected for potential funding—grant programs with an open application period. There are four scenarios in which a ranked application may not receive funding:

- Application selected for potential funding, but not funded due to the Agency's lack of funds;
- Application selected for potential funding, but not funded due to missing information;
- Application not selected for potential funding due to its ranking and the available level of funds to the Agency; and
- Application not selected for potential funding due to very low ranking.

As summarized in Table 1 and described in the following paragraph, the process for handling these four situations would be slightly different.

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Table 1. Disposition of Applications in Programs with Open Application Periods

Item	Application has been selected for potential funding		Application has not been selected for potential funding	
Application is not funded due to ...	Agency's lack of funds	More information needed	Its ranking and Agency's lack of funds	Noncompetitive/very low score
Is application carried over to next ranking date?	Yes	Yes, but only if requested information is provided in specified timeframe	Yes	No
Is application carried over to the next fiscal year	Yes		Yes; applicant is afforded opportunity to revise their application	No
Is carried-over application recompeted (i.e., re-evaluated and rescored)?	No	No	Yes	Not applicable

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An application that is selected for potential funding, but is not funded due to the Agency's lack of funds, will be carried forward in the fiscal year in which it was selected for potential funding until either it is funded or the end of the fiscal year in which it was selected, whichever occurs first. If the selected application is not funded by the end of the fiscal year in which it was selected for potential funding, the Agency will carry the application forward into the next fiscal year unless the applicant requests in writing the Agency to withdraw the application from further consideration. Unless there is a change to the regulation or authorizing statute that would affect this process, a selected application that is carried forward into the next fiscal year would not be subject to re-evaluation or re-scoring, even if the priority categories applicable to that application change for the next fiscal year, because it has already been completed. However, the application may be required to be updated if information in it becomes outdated.

If a ranked application has been selected for potential funding, but has not been funded because additional information is needed, the Agency will notify the applicant as to what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application from further processing.

If a ranked application has not been selected for potential funding because of its ranking and the available level of funds to the Agency, it will be included in the set of applications considered in each subsequent ranking date in the fiscal year in which it was ranked until it is either selected for potential funding, funded, or the end of the fiscal year in which the application was ranked is reached, whichever occurs first. The Agency will retain the application for consideration in the next fiscal year. All such retained applications must be updated by the applicant as required by the Agency (e.g., financial conditions, change in supporting documentation requirements). In this instance and in addition to satisfying Agency requirements, the applicant is afforded the opportunity to otherwise revise the application. The application will then be re-evaluated and re-scored along with new applications received for consideration for funding in the next fiscal year.

If a ranked application has not been selected for potential funding because it is determined by the Agency to be non-competitive due to its very low score by the end of the fiscal year in which it was scored, the Agency will remove the application from further consideration and will notify the applicant that the Agency is no longer considering the application.

Disposition of applications not selected for funding—grant programs with an application deadline. All ranked applications that are not funded in the fiscal year in which they were submitted will not be carried forward into the next fiscal year. The Agency will so notify the applicant in writing.

If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the applicant as to what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application for further consideration and will so notify the applicant. In this situation, the application is also not carried forward into the next fiscal year.

8. *Grant agreement and conditions.* This section of the new platform addresses the mechanism the Agency will use an Agency-approved grant agreement to make awards to those applicants selected for funding. This section also identifies additional conditions that must be met by grantees both prior to the award being made and after the award is made. In general, the proposed requirements are the same as those for the grant programs currently in place. The proposed rule, though, provides a consistent structure for the administration of all of the grant programs covered by the proposed rule.

9. *Post-award activities and requirements.* As for grant agreements and conditions, the proposed rule generally adopts current practices and provides a consistent structure for all of the grant programs covered by the proposed rule.

10. *Grant close out and related activities.* As for the previous two sections, the requirements in this section generally adopt current practices and provide a consistent structure for all of the grant programs covered by the proposed rule.

II. Discussion of Proposed Rule

In this section, the proposed rule is further described. First, an overall organization of the proposed rule is presented, followed by a section-by-section discussion of each part. Please note that the discussion in this section applies in its entirety to seven of the eight grant programs being included; it does not apply in its entirety to Tribal College grants. The provisions discussed in this section that apply to Tribal College grants are contained in proposed §§ 5002.1 through 5002.14 and in proposed §§ 5002.60 through 5002.80. The discussions in this section on eligibility, applying for a grant, processing applications, application scoring, and award process do not apply to Tribal College grants. A discussion of these aspects of the proposed rule for Tribal College grants is presented in section II.B.

A. Overall Organization of the Rule

The proposed rule is divided into two main parts, subparts A and B. Subpart A, contains the provisions that apply to all of the grant programs, except for Tribal College grants as described in the previous paragraph, covered by the proposed rule. In addition, subpart A contains provisions applicable to cooperative agreements. These subpart A provisions would not become effective until cooperative agreements are provided and published in subpart B to this part.

Subpart B, contains the provisions specific to the grant programs covered by the proposed rule. The Agency is not proposing to include cooperative agreements in subpart B at this time, but may consider adding cooperative agreements to subpart B at a future date.

Subpart A. Subpart A is divided into nine major elements. The first element, General Provisions, covers general provisions associated with this part, and addresses the purpose of this part (§ 5002.1), the definitions and abbreviations used in this part (§ 5002.2), appeal rights (§ 5002.3), exception authority (§ 5002.4), compliance with other Federal laws (§ 5002.5) and with State and local laws (§ 5002.6), environmental requirements (§ 5002.7), and forms, regulations, and instructions (§ 5002.8).

The second element, Funding and Programmatic Change Notifications, covers funding and programmatic change notifications (§ 5002.15).

The third element, Eligibility, covers the basic eligibility requirements for eligible applicants (§ 5002.20), ineligible applicants (§ 5002.21), eligible projects and purposes (§ 5002.22), and ineligible projects and purposes (§ 5002.23).

The fourth element, Applying for a Grant, covers the basic requirements associated with applying for a grant (§ 5002.30), including preapplications (§ 5002.31) and applications (§ 5002.32).

The fifth element, Processing and Scoring Applications, addresses the steps that the Agency will use in

processing and scoring applications. The steps associated with processing applications (§ 5002.40) cover initial review of applications by the Agency, notifications to the applicants, resubmittal of applications by applicants, and applications that are subsequently found to be ineligible. This element also addresses the processes for dealing with application withdrawal (§ 5002.41) and the scoring of applications (§ 5002.42), including the priority categories that the Administrator and the State Directors may use in scoring applications. Specific priority categories and points to be used are found in subpart B for each individual program.

The sixth element, Awarding Grants, covers the award process (§ 5002.50). In this element, the process that the Agency will use in ranking and selecting applications for funding is presented. In addition, this element covers processes associated with applications that are not selected and those that are selected, but do not receive funding.

The seventh element, Grant Agreements and Conditions, addresses the grant agreement and conditions for applications that are funded. This element covers actions that must occur prior to grant closing or start of construction (§ 5002.60), the process used in making the grant agreement (§ 5002.61), and the use of remaining funds (§ 5002.62).

The eighth element, Post Award Activities and Requirements, addresses activities and requirements once an award has been made. This element covers the following areas:

- Monitoring and reporting program performance (§ 5002.70);
- Programmatic changes and budget revisions (§ 5002.71); and
- Transfer of obligations (§ 5002.72).

The ninth element, Grant Close Out and Related Activities, covers grant close out, non-compliance, and termination (§ 5002.80).

Subpart B. This subpart addresses provisions that are specific to the individual programs as follows:

- Provisions specific to the Community Facilities grant program are in found in § 5002.101;
- Provisions specific to the Rural Energy for America grant program are found in § 5002.102;
- Provisions specific to the Rural Cooperative Development grant program are found in § 5002.103;
- Provisions specific to the Distance Learning and Telemedicine grant program are found in § 5002.104;
- Provisions specific to the Value-Added Producer grant program are found in § 5002.105;
- Provisions specific to the Water and Waste Disposal Facilities grant program are found in § 5002.106;
- Provisions specific to the Economic Impact Initiatives grant program are found in § 5002.107; and
- Provisions specific to the Tribal College grant program are found in § 5002.108.

The intent of subpart B is to identify all of the provisions specific to each of the eight programs. In this way, each program maintains its integrity under the new platform. Within subpart B, each program specific provisions are related back, where applicable, to a corresponding section in subpart A. For example, each section has subsections that address applicant and project eligibility. In addition, some program-specific requirements in subpart B supersede specific subpart A requirements. For example, there is a subpart B provision for value-added producer grants that indicates that the subpart A requirement for the project to primarily serve a rural area does not apply to value-added producer grants.

B. Discussion of Sections

Purpose and Scope (§ 5002.1)

This section defines the purpose, scope, and applicability of this part (§ 5002.1(a), (b), and (c)), respectively.

This rule applies to ''grant only'' applications and not to loan grant applications (§ 5002.1(c)(1)). A loan and grant combination application is one in which an entity is seeking both a loan and a grant in order to fund its project. This part would apply only to ''grant only'' applications, unless another 7 CFR part incorporates provisions from the proposed rule. If an applicant is seeking a grant as part of a ''grant and loan'' application, this part would not apply to the grant portion of the grant and loan application, unless another 7 CFR part incorporates provisions from the proposed rule.

This section also includes the incorporation by reference (§ 5002.1(d)) of all of the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations. These parts are referred to in the preamble and the rule as the ''Departmental regulations,'' and constitute the existing Department's regulations affecting all grant programs. Note that this phrase is not used in all sections of the rule. The absence of this phrase from a section of the rule does not mean that the Departmental regulations do not apply to that section.

Definitions and Abbreviations (§ 5002.2)

This section presents the definitions and abbreviations used in this part, including terms that may be specific to one of the eight programs found in subpart B. It also incorporates by reference terms used in the Departmental regulations.

The proposed rule contains fewer definitions than found in the existing regulations, primarily because the deleted terms are not used. Some definitions have been added or revised.

The proposed rule includes a definition for ''poverty line.'' Poverty line is used determining project eligibility under the Community Facilities program. The Agency determines the poverty line in a manner consistent with criteria established by the Department of Health and Human Services (DHHS) and the Department of Housing and Urban Development. Current poverty line information published by DHHS, however, does not cover Puerto Rico, the Western Pacific Islands, and the Virgin Islands. As it is possible for the Community Facilities grant program to award grants to applications from these locations, the Agency has established poverty lines for these locations, based on the level of income.

Appeal Rights (§ 5002.3)

As currently provided, this paragraph provides the legal basis for a person to file an appeal of an adverse decision made by the Agency in implementing the proposed program. When the Agency makes an adverse decision, a person may file an appeal to the National Appeals Division in accordance with 7 CFR part 11.

Exception Authority (§ 5002.4)

This section identifies the situations under which the Administrator may make exceptions to the requirements contained in the regulation.

Unlike the current regulations, the proposed rule identifies three exceptions to this Exception Authority, where the Administrator would not be allowed to make exceptions. These three exceptions are:

- Applicant eligibility;
- Project eligibility; and
- Rural area definition.

The Agency believes that applicant and project eligibility criteria must be maintained at all times in order to be consistent with statutory authority.

Compliance With Other Federal Laws (§ 5002.5)

This section states that applicants must comply with other applicable Federal laws including, but not limited to, Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964.

State Laws, Local Laws, and Regulatory Commission Regulations (§ 5002.6)

This section states that the provisions of this part will be controlling in all cases where there are conflicts between the provisions of this part and State or local laws or regulatory commissions regulations.

Environmental Requirements (§ 5002.7)

The applicant would be required to comply with Agency environmental requirements as found under subpart G of either 7 CFR part 1940 (for Rural Housing, Business-Cooperative, and Utilities Services) or 7 CFR part 1794 (for Rural Utilities Services), as appropriate. These requirements are consistent with those under the eight current programs.

In addition, the applicant must not take any action or incur any obligation with respect to the proposed project that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse effect on the environment. If such actions or obligations have been incurred that would limit the range of alternatives, the project will be ineligible for a grant under this part.

Forms, Regulations, and Instructions (§ 5002.8)

This section states that all forms, regulations, instructions, and other materials necessary to submit applications for each of the grant programs included in this part may be obtained through the Agency. This material, including application packages, will be available from Agency offices, including but not limited to Rural Development State Offices, and the Agency's Web site.

Funding and Programmatic Change Notifications

This part of the proposed rule identifies the types of information to be included in the notifications, the methods that the Agency will use to disseminate this information, and when the notifications will be made.

Notifications (§ 5002.15)

This section identifies the types of information the Agency will include in the notifications, which includes the level of available funds, the minimum and maximum grant amounts, and various programmatic changes (e.g., changes in Administrator and State Director priority categories and points, changes in ranking dates, changes in application deadlines for those programs with specified application deadlines). The primary notification methods that the Agency will use to make this information are **Federal Register** notices for Nationally-competed grant programs and Rural Development's Web site for State-allocated grant programs. All information contained in these notifications would also be available at any Rural Development office.

Notifications involving funding will be made each fiscal year for each grant program. Notifications involving changes in Administrator and State Director priority categories and points will be made at least 30 days prior to the first ranking date in the year or the application deadline, as applicable. Notifications involving all other programmatic changes will be made on an as needed basis.

Eligibility

This section covers requirements associated with both applicant and project eligibility and is divided into four sections, which are described below. In order for a project to be considered for a grant, both the applicant and the project must be determined by the Agency to be eligible.

Applicant Eligibility (§ 5002.20)

This section identifies the requirements for applicant eligibility. For an applicant to be eligible for a grant under this part, the applicant must meet the criteria in this section and the applicant eligibility criteria in subpart B for the applicable grant program. The program-specific applicant eligibility requirements found in subpart B for the program under which their project falls are discussed later in this preamble when the individual programs are presented.

This section identifies two common applicant eligibility requirements that all applicants must meet. These two criteria address citizenship (§ 5002.20(a)) and legal authority and responsibility (§ 5002.20(b)).

To be eligible, an applicant must either (1) be a citizen of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa or (2) reside in the U.S. after legal admittance for permanent residence. If the applicant is an entity other than an individual, the applicant must be at least 51 percent owned by persons who are either citizens of one of the countries identified above or legally admitted permanent residents residing in the U.S.

In addition, the applicant must have, or be able to obtain, the legal authority to carry out the purposes of the grant.

Ineligible Applicants (§ 5002.21)

This section identifies criteria that would make an applicant ineligible for a grant under this part. An applicant would be ineligible if the applicant (1) Is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, (2) has an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), (3) is delinquent on the payment of Federal income taxes, or (4) is delinquent on Federal debt. These conditions are generally consistent with those found in the current programs.

Project Eligibility (§ 5002.22)

This section identifies three criteria required for a project to be eligible to receive a grant under this part. To be eligible, a project must meet the criteria in this section that are applicable to the project, unless otherwise specified in subpart B for a specific program. For most programs, additional project eligibility criteria are found in subpart B for specific programs. Thus, for a project to be eligible for a grant under this part, the project must meet both the applicable criteria in this section (unless otherwise specified in subpart B) and the criteria in subpart B for the applicable grant program.

A grant application for a project that meets its applicable project eligibility criteria as specified in subparts A and B will not automatically receive grant funding. However, a project that fails to meet any one of its applicable project eligibility criteria would be automatically ineligible for consideration for a grant, regardless of the other attributes of the project.

Primarily serve a rural area. The first criterion (§ 5002.22(a)), which applies to all projects and purposes, except those under the Value-Added Producer grant program (§ 5002.105) and the Rural Energy for America grant program (§ 5002.102), addresses the purpose of the project—the project must primarily serve a rural area. This criterion is generally consistent with what the current programs require, but, unless otherwise specified in subpart B, does not require the project to be physically located within a rural area.

For both the Value-Added Producer grant program and the Rural Energy for America grant program, the rule would require all projects to be located in a rural area. For the Rural Energy for America grant program, the Agency is proposing to continue the current requirement that the project must be located in a rural area. For the Value-Added Producer grant program, however, this is a new requirement from the current program.

Ownership and control requirement. The second criterion (§ 5002.22(b)) applies only to those projects and purposes that acquire or improve real or personal property, unless otherwise specified in subpart B. This criterion requires the applicant to be the owner of the property or have leasehold interest acceptable to the Agency in the project and control the revenues and expenses of the project, including operation and maintenance.

Service area selection. The third criterion (§ 5002.22(c)) applies only to those projects and purposes that are determined by a service area. This criterion specifies that the proposed service area of the project must be chosen in a way that no user or area is excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This criterion, where applicable, is the same as found under the current regulations of the Community Facilities and the Water and Waste Disposal Facilities grant programs.

To reiterate, a project or purpose must meet each one of the project eligibility criteria applicable to it in order to be eligible for a grant. Meeting only some of the criteria is insufficient to be eligible. These criteria cannot be waived under the Exception Authority (§ 5002.4).

Ineligible Projects and Purposes (§ 5002.23)

This section identifies projects and purposes that are ineligible for grants under this part regardless of whether the project meets the conditions specified in subpart B and § 5002.22. These projects represent primarily an aggregation of projects and purposes already prohibited under the programs being included in today's proposed rulemaking. The Agency added to this aggregation a number of additional projects and purposes as ineligible, which are identified earlier in this preamble.

As also noted earlier in this preamble, the Agency will provide a notification as needed to identify additional projects or purposes that the Agency has determined are ineligible for grants under this part.

Applying for a Grant

Applying for a Grant (§ 5002.30)

This section discusses the submittal of preapplications and applications when applying for a grant. For most applicants, submitting a preapplication is optional, but is required by the Departmental regulation incorporated herein for certain government applicants based on criteria contained in the Departmental regulations. This section also points out that the submission of a preapplication, or the lack thereof, does not affect in any way the evaluation and scoring of the subsequent application, and applicants who submit a preapplication do not receive any priority for funding.

This section also contains requirements for the filing of preapplications and applications, including:

- When they are to be submitted;
- Where to submit them; and
- Their format.

Lastly, this section addresses *incomplete applications*. The Agency will reject incomplete applications. If the Agency receives an incomplete application, the Agency will notify the applicant of the elements that made the application incomplete. The Agency points out that applicants need to consider that applications must be submitted sufficiently ahead of the applicable application deadline to allow for Agency review, notification to the applicant of missing elements, and resubmittal of the application before the applicable application deadline. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

Preapplications (§ 5002.31)

This section presents the requirements associated for submitting preapplications, and applies to both Nationally-competed grants and to State-allocated grants. Submittal of a preapplication or, in lieu of a preapplication, a written request for an eligibility determination, is optional unless otherwise required under the Departmental regulations (as defined in § 5002.2). In addition, all applicants (governmental and non-governmental) must comply with the provisions of the Departmental regulations when submitting a preapplication.

This section also points out that, unless the preapplication is required by department regulations, the Agency's assessment of applicant and project eligibility based on a preapplication is advisory in nature and does not constitute a formal determination by the Agency of either applicant or project eligibility. The formal determination of eligibility would be made once the application is received. If the preapplication is submitted because it is required by the Departmental regulations, the Agency will assess it in accordance with the Departmental regulations.

Applications (§ 5002.32)

This section identifies the application forms required for grant applications under this part and states that the Agency will make available to the public program-specific application packages, which will include the necessary forms and instructions for filing an application for the specific grant program. For some programs, additional application requirements are being proposed. These are found in subpart B and are discussed later in this preamble.

Finally, all applications must be consistent with Departmental regulations and must be submitted with the appropriate standard form (*i.e.*, forms in the SF 424 series).

Processing Applications

Processing Applications (§ 5002.40)

This section identifies the process that the Agency will use to review and process applications including the initial review of application, notification to the applicants of the Agency's review results, the resubmittal of applications, and subsequent ineligibility determinations. The processing of applications was discussed earlier in the preamble (see Section D, Item 5).

Application Withdrawal (§ 5002.41)

This section outlines actions to be performed by the applicant and the Agency if, during the period between the submission of an application and the execution of documents, the project is no longer viable or the applicant no longer is requesting financial assistance for the project. Upon such notification by the applicant, the Agency will either withdraw the application or, if it has already been selected for funding, rescind the selection of the application.

Application Scoring

Scoring Applications (§ 5002.42)

This section identifies the process that the Agency will use to score applications. As noted earlier in this preamble, the Agency will only score applications for which it has determined that both the applicant and

project are eligible and the project is feasible or is likely to be feasible.

As provided under § 5002.42(a), for grant programs with an open application period, all such applications received in a Federal fiscal year will be scored in the fiscal year in which it was submitted unless it is received after the last ranking date of the fiscal year for that program. Unless a program issues a notification indicating otherwise, this would be August 15. If the application is received after the last ranking date of the fiscal year, the Agency will score the application no later than the first ranking date of the next fiscal year. Such applications will be scored against the priority categories and their point values effective for the next fiscal year.

For grant programs with a specified application deadline, each such application received will be scored in the year it was received unless it is received after the applicable application deadline. Any application received after the application deadline for that program will not be considered by the Agency.

As stated in § 5002.42(b), the Agency will score applications for each grant program based on the priority categories and their associated points using the procedures specified in subpart B. This paragraph also states that the Agency will score applications based on the information supplied by the applicant at the time the applicant submits the application to the Agency.

Paragraphs (b)(1) and (2) of this section present, respectively, the inclusive list of Administrator and State Director priority categories that each grant program may consider when awarding points for these priority categories. The specific set of priority categories that each program will consider in scoring applications, and the points that can be awarded for these priority categories, are found in subpart B for each grant program.

Awarding Grants

Award Process (§ 5002.50)

This section describes the award process that will be used in selecting application for (potential) funding.

As stated in § 5002.50(a), the Agency will rank all scored applications for each program on or after each ranking date for that program to create a priority list of all scored applications for consideration for (potential) funding. (Note that the ranking dates for each program are found in subpart B.) If the ranking date falls on a weekend or a Federally-observed holiday, the next Federal business day will become the applicable ranking date. Finally, applications that are ranked in a given Federal fiscal year will be considered for selection for funding for the fiscal year in which the application was ranked.

Paragraph (b) of this section describes the process the Agency will use in selecting applications for funding or for potential funding. From a program's priority list, the Agency will select applications for funding using criteria specified in § 5002.50(b)(1)(i) through (iii) (which were discussed earlier in this preamble in Section D, Item 7) and any additional program-specific criteria found in subpart B for the grant program. Selection of applications for funding will also be conducted in a manner consistent with the Departmental regulations. For each application selected for (potential) funding, the Agency will notify the applicant in writing.

Paragraph (c) of this section identifies the process the Agency will use for applications that are selected for (potential) funding, but are not funded. This process was described earlier in this preamble in Section D, Item 7.

Lastly, § 5002.50(d) addresses the process the Agency will use if a State or local government raises objections to a proposed project under the intergovernmental review process and the objections are not resolved within 90 days of the Agency's selection of the application.

Grant Agreements and Conditions

This section addresses the grant agreement and conditions that recipients (and subrecipients) of grants are required to satisfy in order to receive the grant funds and to be complied with once the grant agreement has been signed and funds awarded.

Actions Prior to Grant Closing or Start of Construction, Whichever Occurs First (§ 5002.60)

This section addresses three areas—excess grant funds (§ 5002.60(a)), evidence and disbursement of other funds (§ 5002.60(b), and the acquisition of land, easements, water rights, and existing facilities (§ 5002.60(c)). The proposed requirements in this section are consistent with existing program implementation.

As stated in § 5002.60(a), which addresses excess grant funds, the Agency will reassess the applicant's funding needs whenever there is a significant reduction in project cost or a change in project scope. This paragraph identifies the factors and procedures that the Agency will use in making this reassessment and any attending decreases in funding needs. The Agency will deobligate any obligated grant funds not needed to complete the project.

Under § 5002.60(b), which addresses evidence of and disbursement of other funds, applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds would be required to present evidence of the commitment of these funds from such other sources. An agreement should be reached with all funding sources on how funds are to be disbursed before the start of construction.

Lastly, under § 5002.60(c), which addresses acquisition of land, easements, water rights, and existing facilities, applicants would be responsible for acquiring all property rights necessary for the project and determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee. Requirements are specified for rights-of-way and easements (§ 5002.60(c)(1)), for title for land and for existing facilities (§ 5002.60(c)(2)), for water rights, and for lease agreements (§ 5002.60(c)(3)).

Grant Agreement (§ 5002.61)

The section identifies the documents and steps that the Agency will use to enter into a grant agreement with the applicant.

Section 5002.61(a) states that the Agency will notify each applicant whose application has been selected for funding using a letter of conditions. The letter of conditions will set out the conditions under which the grant will be made. After reviewing the conditions and requirements set forth in the letter of conditions, if the applicant agrees with those conditions, the applicant would be required to acknowledge, in writing, acceptance of the conditions. If, however, the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

As provided under § 5002.61(b), the Agency will execute grant awards through the issuance of an Agency-approved grant agreement between the Agency and the grantee. In addition, other documents as identified by the Agency will be executed. The Agency notes that it will not advance any grant funds to the grantee until this agreement is signed by the grantee.

As provided under § 5002.61(c), the Agency will execute cooperative agreements through the issuance of an

Agency-approved cooperative agreement, or similar Agency-approved document, between the Agency and the recipient of the cooperative agreement. In addition, other documents as identified by the Agency will be executed. Finally, this paragraph states that there will be significant Agency involvement in cooperative agreements.

Lastly, § 5002.61(d) states that the Agency will disburse grant funds according to the letter of conditions or the grant agreement, as applicable.

Use of Remaining Funds (§ 5002.62)

This section provides requirements on the handling of funds that remain after all costs incident to the basic project have been paid or provided for as follows:

- Remaining funds are not to include grantee contributions (§ 5002.62(a)).
- Remaining funds may be refunded to each source in direct proportion to the amounts obtained from each source (§ 5002.62(b)).
- Remaining funds may be used for eligible grant purposes, provided the use will not result in major changes to the project, the purpose of the grant remains the same, and the project remains within its original scope (§ 5002.62(c)).

Under § 5002.62(d), grant funds not expended after being used for eligible grant purposes will be canceled. Before the Agency cancels these unexpended grant funds, the Agency will provide written notification to the grantee of the Agency's intent to cancel the remaining funds.

Post Award Activities and Requirements

Monitoring and Reporting Program Performance (§ 5002.70)

In § 5002.70(a), the Agency will monitor grantees to the extent necessary to ensure that facilities are constructed in accordance with Agency-approved plans and specifications and to ensure that funds are expended for approved purposes.

Section 5002.70(b) would require grantees to submit performance reports on a semiannual basis, unless otherwise specified in subpart B, and a final performance report. The semiannual performance reports are to include a comparison of accomplishments with the objectives stated in the application.

The grantee would also be required to submit additional reports that may be specified in the grant agreement, in a notification issued under § 5002.15, or as specified in subpart B.

Finally, the Agency is reserving the right to collect additional project and/or performance data for projects that have received grant funds.

Programmatic Changes and Budget Revisions (§ 5002.71)

In addition to the requirements specified in the Departmental regulations, this section would allow the Agency, at its sole discretion, to require an applicant to submit a new application if there is a change to the scope of the project whose application has been selected. If a new application is submitted, it would be re-ranked in accordance with this part.

Transfer of Obligations (§ 5002.72)

This section addresses the conditions under which an obligation of funds established for an applicant can be transferred to a different (substituted) applicant. The two conditions are:

- The substituted applicant is eligible, has a close and genuine relationship with the original applicant, and has the authority to receive the assistance approved for the original applicant (§ 5002.72(a)); and
- The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged (§ 5002.72(b)).

Grant Close Out and Related Activities

Grant Close Out and Related Activities (§ 5002.80)

This section addresses grant close out for all grants awarded under this part. In addition to requiring compliance with the Departmental regulations, this section allows the Agency to suspend or terminate a grant if the grantee fails to submit satisfactory reports on time under the provisions of § 5002.70(b).

Subpart B—Program-Specific Provisions

Subpart B presents the program-specific requirements for each of the programs covered by this subpart.

Community Facilities (§ 5002.101)

This section identifies program-specific requirements for community facility projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a community facilities grant. The program-specific provisions for community facility projects follow.

Applicant Eligibility

To be eligible for a community facilities grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, the subpart B criteria (§ 5002.101(a)), which are the same as for the current program, are:

- The applicant must be a public body, such as a municipality, county, district, authority, or other political subdivision of a State; a non-profit corporation or association; or a Federally recognized Indian tribe; and
- The applicant must have significant ties with the local rural community. Such ties are necessary to ensure to the greatest extent possible that a facility under private control will carry out a public purpose and continue to primarily serve rural areas.

The proposed rule identifies two conditions under which ties with the local rural community can be evidenced. These conditions, which are not exclusive, are:

- Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community, and
- Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

These community tie provisions are the same as found in the current Community Facilities regulation.

Project Eligibility

To be eligible for community facilities grant funding, the project would have to meet the applicable project eligibility requirements specified in subpart A and be for an essential community facility (§ 5002.101(b)). Essential community facilities include, but are not limited to, fire, rescue, health and public safety facilities or equipment, telecommunications, supplemental and supporting structures for other rural electrification or telephone systems, the purchase of major equipment that in themselves provide an essential service to rural residents, and the purchase of facilities necessary to improve or prevent a loss of service.

In addition, subpart B requires community facility projects to:

- Be located in a rural area (except for eligible utility-type of facilities such as hydroelectric and telecommunication systems);
- Meet certain median household income and population requirements for those to be served by the project;
- Be based on satisfactory sources of revenue;
- Have an applicant who is responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms; and
- Be unable to finance the proposed project from their own resources or

through commercial credit at reasonable rates and terms.

These conditions are the same as found in the current grant program for community facilities.

Uses of Grant Funds

Subpart B for community facilities grants identifies additional eligible and ineligible uses of grant funds ((§ 5002.101(c) and (d), respectively). These uses are the same as found in the current implementation of the Community Facilities grant program, with the exception, as discussed below, of adding two additional eligible uses and identifying recreational facilities (except for community parks and community wellness centers) as an ineligible use. Eligible uses of grant funds (§ 5002.101(c)) include:

- Construction, enlargement, extension, or otherwise improvement of essential community facilities providing essential service primarily to rural residents and rural businesses;
- Construction or relocation of public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of eligible facilities;
- Relocation of private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of eligible facilities;
- Facilities that have no more than 25 percent of the floor space occupied by Federal Agencies, State Agencies, or other ineligible entities or purposes, when these entities enhance the primary purpose of the facility; and
- Payment of certain expenses that are a necessary part of a project to finance eligible facilities.

The proposed rule also adds the following eligible purpose:

- Facilities that house State funded organizations that are typically housed in community funded facilities and offering services provided by an essential community facility.

Examples of ineligible uses of grant funds, which are listed in § 5002.101(d), are:

- Payment of initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses (unless a Community Facilities loan is part of the funding package, in which case the grant would be part of a grant-loan combination and would not be subject to this proposed rule);
- Construction or repair of electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;
- Refinancing of existing indebtedness;
- Payment of interest;
- Payment of any costs when the median household income of the population to be served is higher than specified percentages of the State non-metropolitan median household income;
- Recreational facilities, except for community parks and community wellness centers; and
- Payment for any purposes restricted by the Community Facilities direct loan program (see 7 CFR 1942.17(d)(2)).

One type of project that the Agency is adding to the list of ineligible projects under the Community Facilities grant program is recreational facilities, with two exceptions as discussed below. The Community Facilities grant program is, and has been, oversubscribed; that is, it receives more grant requests than it can fund. The Agency has found that the types of grant requests it receives are usually for projects that more directly address essential community needs, such as health and safety needs, than do most recreational facilities. Given this situation, it is highly unlikely that recreational facilities would be funded. Thus, the Agency is proposing to include recreational facilities, except as discussed below, in the list of ineligible projects. If the Agency does not explicitly exclude recreational facilities, except as indicated, applicants might be otherwise encouraged to submit applications with little chance of scoring high enough relative to other types of projects to be funded.

As noted above, the Agency is proposing to allow grants to be used for two types of recreational facilities. These are community parks and community wellness centers. Community parks could include sport fields that would be used for citizen-based sports (e.g., youth soccer league fields, community softball fields), but would exclude professional and semi-professional sports venues. Many communities have found that providing community parks and community wellness centers allow them to attract and, equally important, retain citizens. The Agency believes that these two types of recreational facilities provide an essential service to such communities and should be eligible for grants under the Community Facilities grant program.

Finally, with regard to recreational facilities that would be excluded from the Community Facilities grant program, the Agency recognizes that conditions may change in the future such that the Agency would accept applications for other types of recreational facilities. If this occurs, the Agency would propose to allow specific types of recreational facilities, through a proposed rulemaking change, to apply for a Community Facilities grant.

Funding Limitations and Matching Funds

The proposed rule incorporates the current Community Facilities grant program's maximum grant assistance and funding limitations (§ 5002.101(e)(1) and (e)(2), respectively). The proposed rule (§ 5002.101(e)(3)), consistent with the current program, allows funding of the balance of project costs to consist of other Community Facilities financial assistance, applicant contributions, and loans and grants from other sources. However, other Federal grant funds cannot be used as matching funds unless provide by other authorizing legislation.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.101(f)(1) through (3), and are divided into program-specific priority categories and points, Administrator priority categories and points, and State Director priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.101(f)(1). These priority categories are the same as currently used in scoring community facilities grant applications, with two minor differences (i.e., the population levels for a couple of scoring criteria changed and under ''Other priorities,'' the proposed rule replaces conformance with State strategic plan with educational facility). The points associated with the priority categories, however, have been modified to total 70 points. The relative point values were not changed between priority categories.

The Administrator and State Director priority categories and points are identified in § 5002.101(f)(2) and (f)(3), respectively. With regard to Administrator priority categories and points, the Community Facilities grant program would allow the Administrator to award up to 20 points (compared to 10 points for the other grant programs) to improve the geographic diversity of awardees in a fiscal year. The current Community Facilities grant program identifies additional Administrator priority categories, which are generally

covered in subpart A of the proposed rule.

With regard to State Director priority categories, the Community Facilities grant program would use the State Director priority categories identified in § 5002.42(b)(2)(i) through (x) under subpart A and could award up to 10 points for the State Director priority categories. The proposed State Director priority categories expand upon and repackage those found in the current regulation.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program four times per year (§ 5002.101(g)). The proposed ranking dates are (in the order in which they occur each fiscal year): December 15, March 15, July 15, and August 15.

Additional Criteria for Selecting Applications

Consistent with Departmental regulations, § 5002.101(h) would allow the Agency to consider in selecting applications for funding whether an application is a subsequent request for a previously approved project. If the lower scoring application is for the continuation of an existing funded project, the Agency may give the lower scoring application consideration ahead of a higher scoring application. However, if the request for additional grant funds is due to cost overruns, the Agency will give consideration to the lower scoring application only if the cost overrun is due to certain causes. Specifically, the cost overruns must be due to either high bids or unexpected construction problems neither of which can be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. However, if the cost overrun exceeds 20 percent of the development cost at time of grant approval or if the scope of the original purpose has changed, the Agency would not use this criterion as a factor in choosing a lower scoring application over a higher scoring application. Such an application could still be selected for funding, but it would need to compete based on its ranking and other award criteria.

Public Information Process

This section (§ 5002.101(i)) would require all grants awarded under this section to comply with the public information process specified for community facilities direct loan program (see 7 CFR part 1942.17(j)(9)), as is currently required for community facilities grants. This public information process, in part, requires the applicant to inform the general public regarding the development of any proposed project.

Rural Energy for America (§ 5002.102)

This section identifies program-specific requirements for renewable energy system or energy efficiency improvement projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a Rural Energy for America grant. The program-specific provisions for renewable energy systems and energy efficiency improvement projects follow.

Applicant Eligibility

To be eligible for a Rural Energy for America grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, the subpart B criteria (§ 5002.102(a)) require the applicant to be an agricultural producer or rural small business. This requirement is the same as in the current program for renewable energy systems and energy efficiency improvement grants. However, unlike the current program, the applicant would no longer be required to demonstrate financial need to be considered an eligible applicant. This change was made as a result of the 2008 Farm Bill. As noted below, the Agency, however, is incorporating financial need as a scoring criterion.

Project Eligibility

To be eligible for a Rural Energy for America grant, a project would have to meet the applicable project eligibility requirements in subpart A and subpart B requirements (§ 5002.102(b)). Subpart B identifies two general types of projects—(1) those for renewable energy systems and energy efficiency improvements (§ 5002.102(b)(1)) and (2) those for feasibility studies (§ 5002.102(b)(2)).

Under § 5002.102(b)(1), the project must:

- Be for the purchase, installation, expansion, and/or other energy-related improvement of a renewable energy system or to make energy efficiency improvements;
- Be located in a rural area;
- Be for technology that is replicable and either pre-commercial or commercially available; and
- Have technical merit as determined by the Agency. If the Agency determines that the project is without technical merit, the project would be ineligible for a grant.

Under § 5002.102(b)(2), feasibility studies are eligible projects provided they are for a project that meets the criteria specified in § 5002.102(b)(1).

The project eligibility provisions in § 5002.102(b)(1), and those in subpart A for project eligibility, are found in the current regulations for this program. The project eligibility provisions in § 5002.102(b)(2) are being included in response to section 9007 of the 2008 Farm Bill.

Additional Preapplication and Application Requirements

In addition to the preapplication and application requirements specified in subpart A, subpart B for this program contains program-specific provisions for the submittal of preapplications and applications (§ 5002.102(c)). If an applicant elects to submit a preapplication, it must be received by the Agency on or before January 15 to be considered for funding by the Agency for that fiscal year.

For applications, the proposed rule would require applications to be received by the Agency on or before June 15 each year to be considered for funding for that fiscal year. Applications received by the Agency after June 15 would not receive consideration for funding for that fiscal year.

The proposed rule also allows for the submittal of lower documentation applications (referred to as ''simplified applications'' under the current program) for renewable energy systems and energy efficiency improvement projects. The proposed rule contains criteria to determine if an applicant is eligible to submit a lower documentation application. These criteria are:

- Total eligible project costs are $200,000 or less; and
- The proposed project uses either commercially available renewable energy systems or energy efficiency improvements.

In addition, the applicant would be required to agree to grant reimbursement after the project is completed. Project completion would be demonstrated when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency.

The proposed criteria for submitting a lower documentation application are consistent with the current program. The current regulation, however, has additional criteria (e.g., addressing project construction, timeframe for project completion, and interim financing) that the Agency is not

including in this proposed rule. Such information would still be considered by the Agency in evaluating grant applications, but would use the application package for this program to ensure such information was included in the application.

As under the current program, it is the Agency's intent to allow lower documentation applications to exclude certain financial information and the business-level study for renewable energy systems from the application. In addition, the technical reports associated with lower documentation applications can be less detailed than other applications submitted under this program. For example, the technical reports for lower documentation applications are not required to provide authoritative evidence that project service providers have the necessary professional credentials or relevant experience to perform the required services. Instead, such technical reports are to list all key service providers.

Eligible Project Costs

Subpart B for Rural Energy for America grants identifies eligible project costs (§ 5002.102(d)(1) through (9)). These eligible project costs are the same as allowed under the current grant program for these types of projects.

The proposed rule would allow eligible project costs in mixed business and residential projects under certain circumstances. Eligible project costs would apply to a mixed business and residential renewable energy system or energy efficiency improvement project if the applicant is an agricultural producer. However, if the mixed business and residential project is from an applicant who is a rural small business, the proposed rule would allow these eligible project costs to apply to the applicant's project only if the residential portion of the project is less than 25 percent of the square footage of the entire project.

Funding Limitations, Matching Funds, Availability of Other Funding, and Grant-Loan Guarantee Combinations

The proposed funding limitation provisions (§ 5002.102(e)(1)), which are the same as in the current Renewable Energy Systems and Energy Efficiency Improvement regulation, would limit:

- The amount of grant assistance to an eligible project under this program to 25 percent of total eligible project costs, which are identified in § 5002.102(e); and
- The maximum amount of grant assistance to one individual or entity to no more than $750,000 in any one Federal fiscal year.

In meeting the applicant share of costs (§ 5002.102(e)(2)), other Federal grant funds and applicant in-kind contributions would not be allowed. Third-party, in-kind contributions, however, would be allowed, provided they do not exceed 10 percent of the matching fund requirement. Passive investor contributions would be acceptable.

Finally, the Agency seeks to leverage the amount of funds available to grantees by requiring certain applicants seeking grants of over $50,000 to seek loan guarantees before being considered for grant funds (§ 5002.102(e)(3)). In addition, the 2008 Farm Bill encourages the Agency to fund smaller grant requests. The Agency, therefore, is proposing provisions to make the program more available to those seeking smaller grants.

Specifically, if the size of the grant amount being requested in the application is $50,000 or less, the Agency will consider funding the application on its own merit, without consideration of other sources of funding. However, if the size of the grant amount being requested in the application is more than $50,000, the Agency will consider funding the application only to the extent that:

1. The applicant cannot obtain a loan guaranteed by the Agency for any portion of the project; or
2. The amount being requested in the grant application is necessary for the bank to make a guaranteed loan to the applicant.

If neither of the two situations described above exist, then the Agency will not consider the application under this rule.

As noted in this preamble, the proposed rule is specific to ''grant only'' projects. However, there is an associated issue with projects seeking a grant-loan guarantee combination under this program. In fiscal year 2008, the Agency began funding the grant portion of a grant-loan guarantee combination from the monies administratively allocated for loan guarantees. The Agency intends to continue this practice subject to future appropriations.

Grant Award Amount

As under the current grant program, the Agency will take into account certain criteria when determining the amount of a grant to be awarded (§ 5002.102(f)). The eight criteria being proposed are:

- The type of renewable energy system to be purchased;
- The estimated quantity of energy to be generated by the renewable energy system;
- The expected environmental benefits of the renewable energy system;
- The extent to which the renewable energy system will be replicable;
- The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under 7 U.S.C. 8105;
- The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity;
- The expected energy efficiency of the renewable energy system; and
- The amount of energy output per amount of grant award.

Six of these eight criteria are in the current regulation. The seventh criterion, expected energy efficiency of the renewable energy system, is required under section 9007 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The eighth criterion, energy output per amount of grant award, is being proposed as part of the results on an Office of Inspector General audit that recommended considering such a criterion for this program.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.102(g)(1) and (g)(2), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.102(g)(1). With two exceptions, these priority categories are the same as currently used in scoring renewable energy systems and energy efficiency improvement grant applications. One exception is the award of points for ''hybrid technology'' projects (i.e., a combination of two or more renewable energy technologies incorporated into a single project), which replaces the ''previous grantee/borrowers'' priority category. The other exception is the award of points for demonstrated financial need. Demonstrated financial need is being proposed as a scoring criterion because it is no longer an eligibility criterion and the Agency has determined that an applicant's financial need is an appropriate criterion for receiving a grant under this program.

The points associated with the priority categories, however, have been modified to total 90 points. The relative point values between priority categories have been modified slightly, with the

largest change associated with environmental benefits.

The Administrator priority categories and points are identified in § 5002.102(g)(2). The current program regulation does not address Administrator priority categories. The Rural Energy for America grant program would allow the Administrator to award an application up to 10 points in the following priority categories:

- Unserved or underserved areas;
- Geographic diversity;
- Emergency conditions;
- Public health and safety; and
- Presidential initiatives.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program twice each year, on or after March 15 and on or after July 15 (§ 5002.102(h)).

Rural Cooperative Development Grants (§ 5002.103)

This section identifies program-specific requirements for rural cooperative development projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a rural cooperative development grant. The program-specific provisions for rural cooperative development projects follow.

Definition

The proposed rule provides a specific definition (§ 5002.103(a)) for the word ''Center,'' because this term has a unique meaning when used in the context of rural cooperative grants.

Applicant Eligibility

To be eligible for a rural development cooperative grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criterion specified in subpart B for this program. Specifically, this subpart B criterion (§ 5002.103(b)), which is the same as in the current Rural Cooperative Development grant regulation, requires that the applicant to be a non-profit organization or institution, including an accredited institution of higher education. Public bodies would not be eligible to receive grants under this section.

Project Eligibility

To be eligible for a rural cooperative development grant, a project would have to meet the applicable project eligibility requirements in subpart A and the following subpart B requirements (§ 5002.103(c)):

- Applications that focus on only one cooperative will not be considered for funding;
- Except for 1994 Institutions, the applicant must provide 25 percent of total project cost; and
- Applications that provide for the sharing of information among centers will not be considered for funding if more than 10 percent of the funding request is for the provision of sharing of information among centers.

The first and third project eligibility criteria are consistent with the current implementation of this program. The second criterion is being added as a result of the 2008 Farm Bill.

The Agency notes that it is proposing to include specifically in the regulation the ''sharing of information among centers'' as an eligible project purpose (§ 5002.103(c)(3)), but to limit the amount of funds that can be awarded to this purpose. The Agency is proposing to include sharing of information as an eligible project purpose because such sharing can assist other centers with proven strategies in cooperative development that could possibly be transferred to other areas of the nation. However, the goal of the Rural Community Development grant program is to facilitate the creation of jobs in rural areas through development of new rural cooperative, value added processing, and rural businesses. With a historically-limited funded program, the sharing of information among centers is not necessarily the highest priority for funding at the current time. Therefore, the Agency is proposing the 10 percent limit on the amount of grant funds that can be awarded to this purpose.

Additional Application Requirements

In addition to the application requirements specified in subpart A, subpart B for this program (§ 5002.103(d)) would require the applicant to include in the application a plan for the establishment and operation by the institution of a center or centers for cooperative development. This plan, which is required under the current regulations for rural cooperative development grants, must contain specific elements, which are statutorily required (§ 5002.103(d)(1) through (5)).

Uses of Grant Funds

Subpart B for rural cooperative development grants identifies eligible and ineligible uses of grant funds (§ 5002.103(e) and (f), respectively). These uses are generally consistent with those allowed under the current grant program (7 CFR 4284, subpart A) for these types of projects.

Grant Agreement and Conditions

Under paragraph § 5002.103(g), three conditions would affect the term of the grant agreement. The first two of the conditions (§ 5002.103(g)(1) and (2)) are required under section 6013 of the 2008 Farm Bill, while the third condition (§ 5002.103(g)(3)) is part of the current implementation of this program. These three conditions are:

- A grant awarded to a center that has received no prior funding under this section shall be made for a period of one year;
- If the Agency determines that it is in the best interest of the program, grants will be awarded for a period of more than one year, but not more than three years, to a center that has successfully met the parameters described in § 5002.103(i)(1)(i) through (v), as determined by the Agency; and
- The Agency will not approve requests to extend the grant period for more than 12 months.

Funding Limitations and Matching Funds

Under paragraph § 5002.103(h)(1), the maximum amount of a grant awarded under this section for 1994 Institutions would be no more than 95 percent of the total cost of the Center. The Agency would be prohibited from requiring a match of more than 5 percent of the total cost of the Center. This is consistent with current program requirements.

Paragraph § 5002.103(h)(2) addresses requirements associated with matching funds. The proposed matching fund requirements are the same as under the current program and address, in general, the form of the matching funds, the acceptable sources for matching funds, and the use of the matching funds.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in proposed § 5002.103(i)(1) and (i)(2), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.103(i)(1). These priority categories are similar to those currently used in scoring rural community development grant applications, with some modification as required under section 6013 of the 2008 Farm Bill. Specifically, the priority categories of

''linkages'' and ''matching funds'' have been removed, and a priority category for ''networking and regional focus'' has been added. In addition, the points associated with the priority categories have been modified to total 90 points. The relative point values were not changed between priority categories.

The Administrator priority categories and points are identified in § 5002.103(i)(2). The Administrator may award an application up to 10 points to improve the geographic diversity of awardees in a fiscal year.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program once each year, on or after July 15 (§ 5002.103(j)).

Additional Criteria for Selecting Applications for Funding

If two projects obtain the same score, the Agency will select the project whose score for the five criteria identified in the authorizing statute for this program (§ 5002.103(i)(1)(i) through (v)) is higher (§ 5002.103(k)).

Distance Learning and Telemedicine Grants (§ 5002.104)

This section identifies program-specific requirements for distance learning and telemedicine projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a distance learning and telemedicine grant. The program-specific provisions for distance learning and telemedicine projects follow.

Definition

The proposed rule provides a specific definition (§ 5002.104(a)) for the term ''Telecommunications or electric borrower,'' because this term has a unique meaning when used in the context of the Distance Learning and Telemedicine grant program.

Applicant Eligibility

To be eligible for a distance learning or telemedicine grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, these subpart B criteria (§ 5002.104(b)), which are in the current Distance Learning and Telemedicine grant regulation, require that:

- The applicant be legally organized as an incorporated organization or partnership; be an Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c); be a state or local unit of government or a consortium; or be an other legal entity, including a private corporation organized on a for profit or not-for profit basis; and
- The applicant have the legal capacity to contract with the Agency to obtain the grant, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency on its own behalf.

Individuals would not be eligible for grants under this program directly. Further, entities that are electric or telecommunication borrowers under the Rural Electrification Act of 1936 would not be eligible for grants under this program provided, however, that such borrowers are eligible for funding under the Distance Learning Telemedicine Combination Loan and Grant Program (7 CFR 1703, subpart D) and the Distance Learning Telemedicine Loan Program (7 CFR 1703, subpart G). These eligibility requirements and conditions are in the current Distance Learning and Telemedicine grant program.

Project Eligibility

To be eligible for a grant under this program, a project would have to meet the applicable project eligibility requirements in subpart A and the following subpart B program-specific requirements (§ 5002.104(c)):

- The project must deliver distance learning or telemedicine services to entities that operate a rural community facility, including libraries, or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas; and
- DLT end-user sites must be located in one of the four rural areas identified in § 5002.104(h)(1)(ii)(A), although the DLT hub site may be located in either a rural or non-rural area. DLT end-user facilities not within one of these four defined rural areas are not eligible for grant funding under this section.

The first of these two criteria is in the current Distance Learning and Telemedicine grant regulation. The second criterion, however, is new, as discussed in the following paragraph.

Under the current DLT regulation, each application must apply certain population criteria to each of its end-user sites, and hubs that are also proposed as end-user sites, in order to determine a rurality score. The rurality score is the average of all end-user sites' rurality scores. For the project to be eligible, the average score of the end user sites must meet a specified minimum threshold score. Under the current scheme for determining the project's eligibility, non-rural end user sites are eligible as long as the minimum rurality score is met. This was not a desired outcome by the Agency. Therefore, all end user sites in each application would be required to be in a rural area in order to be eligible, and, thus, the current minimum rurality score criterion is unnecessary.

Additional Preapplication and Application Requirements

In addition to the preapplication and application requirements specified in subpart A, subpart B for this program contains program-specific provisions for preapplications and applications (§ 5002.104(d)).

If an applicant submits a preapplication (either as required or voluntarily), the proposed rule would require the preapplication to be received on or before January 1 each year in order to be considered for funding in that fiscal year. If the Agency receives a preapplication after January 1, it will not consider the preapplication.

For applications, the proposed rule would require an original and two copies of the application to be submitted. In addition, all applications must be received on or before March 31 of each year to be considered for funding for that fiscal year. If the Agency receives the application after March 31, it will not be considered for funding. Lastly, the applicant must include with the application evidence from the Agency State Director, Rural Development that the application conforms with the State strategic plan as prepared under section 381D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*). If a State strategic plan does not exist, the applicant should so indicate in its application.

Uses of Grant Funds

Subpart B for this program identifies additional eligible and ineligible uses of grant funds (§ 5002.104(e) and (f), respectively). These uses are the same as found in the current program for these types of projects.

Funding Considerations and Matching Funds

Consistent with the implementation of the current program, § 5002.104(g)(1) limits the amount of funds (to 10 percent) that can be used when an application includes any of the three purposes identified in § 5002.104(e)(3), (e)(4), or (e)(5). This limit applies whether the application contains one, two, or all three of these eligible uses.

The provisions for matching funds (§ 5002.104(g)(2)) are consistent with the current Distance Learning and Telemedicine grant regulation. Applicants would be required to provide at least 15 percent of the grant amount requested (i.e., grant funds can be used to pay up to 85 percent of the cost of the project). Matching funds must generally be in the form of cash. In-kind contributions may be substituted for cash if they are used solely for the purposes specified in § 5002.104(e). Additional in-kind contribution requirements are specified in § 5002.104(g)(2)(ii) through (iv). Lastly, any financial assistance from Federal sources would not be considered as matching contributions for this program unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution, and that exception is documented in the application.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.104(h)(1) and (2), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.104(h)(1). While covering the same areas as the program-specific priority categories used in grant applications under the current program, the proposed rule greatly consolidates the scoring into three priority categories, which are:

- Critical need for the project;
- Comparative population sparsity of the service area; and
- The economic need of the applicant's service area.

The points associated with these priority categories have been modified to total 90 points, with points being assigned as 35 for critical need, 30 for population sparsity, and 25 for economic need of the applicant's service area.

Under the current program, the Administrator may select a lower scoring application for funding in order to improve geographic diversity without including Administrator points in the application's scoring. Under the proposed rule, the Agency would retain the ability of the Administrator to consider geographic diversity in selecting applications for funding, but would require the actual awarding of points to applications. As provided for in § 5002.104(h)(2), the Distance Learning and Telemedicine grant program would allow the Administrator to award an application up to 10 points to improve the geographic diversity of awardees in a fiscal year.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program once each year, on or after July 15 (§ 5002.104(i)).

Value-Added Producer Grants (§ 5002.105)

This section identifies program-specific requirements for value-added producer projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a value-added producer grant. The program-specific provisions for value-added producer projects follow.

Definitions

Several terms are being defined in § 5002.105(a) because the terms have a unique meaning when used in the context of the Value-added producer grant program. The terms being defined are: ''agricultural producer,'' ''beginning farmer or rancher,'' ''family farm,'' ''special purpose equipment,'' and ''socially disadvantaged farmer or rancher.''

Applicant Eligibility

To be eligible for a value-added producer grant, an applicant must not only meet the applicant eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criteria specified in subpart B for this program. Specifically, the subpart B criteria (§ 5002.105(b)), which are in the current Value-Added Producer grant regulation, require that:

- The applicant be an independent producer, an agricultural producer group, a farmer or rancher cooperative, or a majority-controlled, producer-based business; and
- If the applicant is a farmer or rancher cooperative, an agriculture producer group, or a majority-controlled producer-based business venture, the applicant must be entering into an emerging market as a result of the proposed project. This requirement does not apply to an independent producer because the authorizing statute does not require it.

Examples of agricultural producers include: A logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Venture Eligibility

To be eligible for a value-added producer grant, a venture would have to meet the eligibility requirements found in § 5002.105(c) in subpart B, which requires the venture to evidence a high likelihood of creating value-added for an agricultural product by meeting at least one of the following categories: (1) A change in its physical state, (2) differentiated production or marketing, as demonstrated in a business plan, or (3) product segregation. The project eligibility requirements in § 5002.22 in subpart A would not apply in determining venture eligibility.

Other program-specific considerations that the Agency will use in determining whether an application for a venture under this program will be considered are:

- The venture must be located in a rural area;
- Working capital grants must have a feasibility study and business plan completed specifically for the proposed venture before the application is submitted. The feasibility study and business plan must be submitted when requested by the Agency during application processing;
- Applicants who have already received a planning grant for the proposed venture would be ineligible to receive another planning grant for the same venture. Applicants who have already received a working capital grant for a venture would be ineligible to receive any additional grants for that venture;
- No venture may be the subject of more than one planning grant or more than one working capital grant under this section. The same venture may, however, be awarded one planning grant and subsequently apply for and receive a working capital grant;
- Not more than one venture per funding cycle per applicant may receive grant funding under this program; and
- If the agricultural product is a value-added product, agricultural producers must have a majority ownership interest in the agricultural product to which value-added is to accrue.

These requirements and considerations are currently being used in implementing the Value-Added Producer grant program.

Uses of Grant Funds

Subpart B for value-added producer grants identifies additional eligible and ineligible uses of grant funds (§ 5002.105(d) and (e), respectively). The eligible uses, which depend on whether the grant is a planning grant or a working capital grant, and ineligible uses, which are the same for both types of grants, are general consistent with the current grant program for these projects (7 CFR 4284, subparts A and J).

Additional Preapplication and Application Requirements

In addition to the preapplication and application requirements specified in subpart A, subpart B for this program contains program-specific provisions for preapplications and applications (§ 5002.105(f)).

For preapplications, if submitted, they must be received by the Agency on or before January 15 each year to be considered for funding in that fiscal year. If the Agency receives a preapplication after January 15, it will not consider the preapplication. In addition, all preapplications must be submitted to the program's National Office.

For applications, all applications must be received by the Agency on or before March 1 of each year to be considered for funding for that fiscal year. If the Agency receives the application after March 1, it will not be considered for funding. The proposed rule also contains program-specific application requirements for business plans and feasibility studies. Business plans must include at least three years of pro forma financial statements. Feasibility studies should show how the venture would operate under a set of assumptions, the technology used, the qualifications of the management team, and the financial aspects of the venture.

Lastly, in response to section 6013 of the 2008 Farm Bill, applicants with ventures requesting less than $50,000 would be allowed to submit applications with less documentation (referred to as ''simplified applications'').

Grant Agreement and Conditions

As required by the 2008 Farm Bill, the length of grant agreements made under this section would not be allowed to not exceed three years (§ 5002.105(g)).

Funding Limitation and Matching Funds

Consistent with the current Value-Added Producer grant regulation, grant funds can be used to pay up to 50 percent of the cost of the venture and the aggregate amount of awards to majority controlled producer-based business ventures may not exceed ten percent of the total funds obligated under this program during any fiscal year (§ 5002.105(h)(1)). The proposed rule would also limit the total amount of grant funds awarded to a recipient in any one year to $500,000.

The provisions for matching funds (§ 5002.105(h)(2)) are also consistent with those being used for the current Value-Added Producer grant program. Specifically,

- Applicants must verify in their applications that matching funds are available for the time period of the grant;
- Matching funds must be at least equal to the amount of grant funds requested;
- Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds;
- Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended; and
- Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.105(i), and are divided into program-specific priority categories and points and Administrator priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.105(i)(1). While covering the same areas as these priority categories used in grant applications under the current program, the proposed rule greatly consolidates the scoring into four priority categories, and adds a fifth category (type of applicant), in response to section 6202 of the 2008 Farm Bill. These priority categories, which apply to both planning grants and working capital grants, are:

- Nature of the proposed venture;
- Personnel qualifications;
- Commitments and support;
- Work plan/budget; and
- Type of applicant.

The points associated with these priority categories have been modified to total 90 points, with up to 25 points available for the first two criteria (nature of the proposed venture and personnel qualifications) and up to 20 points available for the last two criteria (commitments and support and work plan/budget).

The Administrator priority categories and points are identified in § 5002.105(i)(2). The Value-Added Producer grant program would allow the Administrator to award an application up to 10 points to improve the geographic diversity of awardees in a fiscal year.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program once each year, on or after July 15 (§ 5002.105(j)).

Water and Waste Disposal Facilities (§ 5002.106)

This section identifies program specific requirements for water and waste disposal facilities projects. The prospective grantee must comply both with subpart A provisions and the provisions in this section when seeking a water or waste disposal facilities grant. The program-specific provisions for water and waste disposal facilities projects follow.

General

Consistent with the current Water and Waste Disposal Facilities grant regulations, § 5002.106(a) discusses the Agency's general expectations of the experience and expertise of all applicants for water and waste disposal facilities projects.

Applicant Eligibility

To be eligible for a water and waste disposal facilities grant, a prospective grantee must not only meet the eligibility criteria specified in subpart A of the proposed rule, but also the applicant eligibility criterion specified in subpart B for this program. This program-specific criterion (§ 5002.106(b)) requires the applicant to be one of the following:

- A public body, such as a municipality, county, district, authority, or other political subdivision of a State located in a rural area;
- An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based

ownership by or membership of people of the local community; or

• An Indian tribe on a Federal or State reservation or any other Federally-recognized Indian tribe.

This criterion is found in the current Water and Waste Disposal Facilities grant program.

Project Eligibility

To be eligible for a water and waste disposal facilities grant, the project would have to meet the applicable project eligibility requirements specified in subpart A and program-specific project eligibility criteria found in subpart B for this program. The project eligibility criteria in subpart B require, in summary (§ 5002.105(c)(1) through (6)), that the project:

• Serve a rural area that, if such project is completed, is not likely to decline in population below that for which the project was designed;

• Be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable;

• Must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area;

• Must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment;

• Must be for public use and installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served; and

• Be unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

These criteria are the same as found in the current Water and Waste Disposal Facilities grant program.

Notice of Intent To Apply for Grant

Consistent with its statutory authority and the current program, subpart B for this program (§ 5002.106(d)) would require an applicant to provide public notice of its intent to apply for a grant under this program at not more than 60 days before the applicant files its application with the Agency.

Uses of Grant Funds

Subpart B for water and waste disposal facilities grants identifies additional eligible and ineligible uses of grant funds (§ 5002.106(e) and (f), respectively). The proposed eligible and ineligible uses in the current grant program for these types of projects.

Funding Considerations and Matching Funds

Proposed subpart B identifies additional funding considerations that the Agency will use in determining whether or not to fund an application. These considerations, which are found in § 5002.106(g)(1) and are consistent with the current provisions for grants for this program, are, in summary:

• If the grant results in an annual equivalent dwelling unit (EDU) cost that is not comparable with similar systems, the Agency will determine a grant amount based on achieving EDU costs that are not below similar system user costs;

• The amount of grant needed to achieve a reasonable wholesale user cost if the applicant provides wholesale sales or services on a contract basis to another system or entity; and

• The amount necessary to reduce delivery cost to a reasonable level when the annual cost for delivery of service is subsidized.

The provisions for matching funds (§ 5002.106(g)(2)) are consistent with the current Water and Waste Disposal Facilities grant regulation—either 75 percent or 45 percent, depending on the median household income of the service area relative to the poverty line or state nonmetropolitan median income.

Scoring Applications

The priority categories and points associated with those priority categories that would be used to score applications are identified in § 5002.106(h)(1) through (3), and are divided into program-specific priority categories and points, Administrator priority categories and points, and State Director priority categories and points. The maximum number of points an application can receive would be 100 points.

The program-specific priority categories and points are in § 5002.106(h)(1). These priority categories are the same as currently used in scoring water and waste disposal facilities grant applications. The points associated with the priority categories, however, have been modified to total 80 points. The relative point values were not changed between priority categories.

The Administrator and State Director priority categories and points are identified in § 5002.106(h)(2) and (h)(3), respectively. With regard to Administrator priority categories and points, the Water and Waste Disposal Facilities grant program would allow the Administrator to award up to 10 points based on grant size and to improve the geographic diversity of awardees in a fiscal year. No more than 10 Administrator points would be awarded to an application.

With regard to State Director priority categories, the Water and Waste Disposal Facilities grant program would use the State Director priority categories identified in subpart A (§ 5002.42(b)(2)(i) through (x)) plus two additional priority categories. These two priority categories are:

• Arsenic (as specified in a memorandum of understanding with the USEPA); and

• Areas located within 100 miles of New York City's ''ground zero'' as the result of the September 11, 2001, attacks.

Each application under this program is eligible for up to 10 points for the State Director priority categories.

Ranking Applications

Unless otherwise specified in a notification, the Agency will rank grant applications under this program four times per year (§ 5002.106(i)). The proposed ranking dates are (in the order in which they occur each fiscal year): December 15, March 15, July 15, and August 15.

Selecting Applications for Funding—Continuing Projects

Consistent with Departmental regulations, the Agency will, in selecting applications for funding, consider whether an application is for a project that has previously received grant funding from the Agency (§ 5002.106(j)). In this situation, the Agency may give a lower scoring application consideration ahead of a higher scoring application if the lower scoring application is for the continuation of an existing funded project. However, if the request for additional grant funds is due to cost overruns, the Agency will give consideration to the lower scoring application only if the cost overrun is due to certain causes. Specifically, the cost overruns must be due to either high bids or unexpected construction problems neither of which can be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. However, if the cost overrun exceeds 20 percent of the development cost at time of grant approval or if the scope of the original purpose has changed, the Agency would not use this criterion as a factor in choosing a lower scoring application over a higher scoring application. Such an application

could still be selected for funding, but it would need to compete based on its ranking and other award criteria.

User Charges

Consistent with the current program, § 5002.106(k) identifies expectations for user charges. Specifically, user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. In addition, the planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and, if appropriate, additional revenue for facility replacement of short-lived assets without building a substantial surplus.

Professional Services and Contracts Related to the Facility

Consistent with the current program, § 5002.106(l) identifies specific requirements for the Water and Waste Disposal Facilities grant program related to professional services and contracts for these types of projects. Areas specifically covered, which are part of the current grant program for water and waster disposal projects, are:

- Fees provided in contracts and agreements;
- Engineering and architectural services;
- Other professional services; and
- Contracts for other services.

User Estimates

Consistent with the current Water and Waste Disposal Facilities grant program, § 5002.106(m) would require applicants who are dependent on users' fees for operation and maintenance expenses to base their income forecast on realistic base estimates. If users are not currently receiving service, the number of maximum users should not be used in making this estimate and the amount of cash contributions required must be set by the applicant and concurred with by the Agency. For most applicants, an enforceable user agreement with a penalty clause would be required. All applicants would be required to provide a positive program to encourage connection by all users as soon as service is available.

Water Rights

Consistent with the current program, § 5002.106(n) would require the applicant to provide the Agency with, as applicable:

- A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use) and
- A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

Economic Impact Initiatives Grants (§ 5002.107)

The Economic Impact Initiatives grant program is currently being administered under the Community Facilities grant program. The Agency is proposing to continue the current relationship of the Economic Impact Initiative grant program with the Community Facilities grant program. Except for changes that would occur under subpart A of the proposed rule, the Agency is not proposing any changes to the requirements specific to the Economic Impact Initiatives grant program.

Tribal College Grants (§ 5002.108)

As noted earlier, the Tribal College grant program is distinctly different than the other existing grant programs in that it is a very small grant program with a small, statutorily defined set of eligible applicants. Certain provisions in subpart A would apply to this program and certain provisions would not. The provisions that would apply are contained in §§ 5002.1 through 5002.14 and §§ 5002.60 through 5002.80. These provisions generally deal with general requirements of the grant programs and with provisions affecting the actual award of the grants (grant agreement) through grant close-out.

The provisions in subpart A that do not apply to Tribal College grants generally address program notifications, preapplications and applications, applicant eligibility, and processing, scoring, ranking, and selecting applications for funding. These aspects are found in the subpart B program-specific provisions for Tribal College grants in § 5002.108.

Program Notification

Consistent with current program implementation, the Agency will issue a notice each year to the eligible Tribal colleges and universities, identifying the maximum grant size and the date that preapplications are due (§ 5002.108(a)).

Applicant Eligibility

To be eligible for a Tribal College grant, the applicant must be one of the tribal colleges or universities that are identified as 1994 Institutions (§ 5002.108(b)).

Project Eligibility

Grant funds can only be used to develop facilities provided by the Tribal college or university (§ 5002.108(c)). Project eligibility requirements for Tribal College grants are the same as for the Community Facilities grant program, except that a Tribal College grant project does not need to demonstrate economic feasibility (§ 5002.101(b)(3)).

Preapplications and Applications

Both preapplications and applications would have dates by which each should be received by the Agency at the State Office in the State in which the Tribal college or university is located (§ 5002.108(d)). For preapplications, the submittal date will be identified in the annual notification the Agency sends to the Tribal colleges and universities. For applications, the proposed rule would establish March 31 as the application submittal date. The Agency will give priority to preapplications and applications that are received on or before their respective submittal dates over those preapplications and applications that are received after their respective submittal dates.

The proposed rule also requires applicants submitting more than one application in a year to provide a priority listing for the grants it is seeking that year.

Funding Limitations

The maximum amount of a grant awarded under this section would be limited to no more than 95 percent of the total cost of the facility. Further, the Agency would be prohibited from requiring a match of more than 5 percent of the total cost of the facility. (§ 5002.108(e)). These requirements are in response to section 6007 of the 2008 Farm Bill and are different from the current program.

Award Process

In selecting applications for funding, the Agency will use a graduated scale, which is found in § 5002.101(e)(2). In addition, in selecting applications for funding (§ 5002.108(f)), the Agency may:

- Choose to fund only one grant per round from a single applicant;
- Reduce the grant amount for all applicants to a maximum level that will fund at least one application per Tribal college or university that applied during that round; and
- Negotiate to increase the scope of Tribal College projects and grants if funds remain available after the grant selection round.

III. Request for Comments

The Agency is interested in receiving comments on all aspects of the proposed rule. In particular, the Agency is seeking comments in the areas listed below. All comments should be submitted as indicated in the **ADDRESSES** section of this preamble.

A. Criteria for Determining Grant Award Amount for the Rural Energy for America Grant Program (§ 5002.102(f))

The Rural Energy for America program is an evolving area. Therefore, the Agency is seeking comment on whether there are any other criteria that the Agency should consider when awarding funding to grants under this program. Please be sure to provide sufficient detail on each criterion, how it would be measured, and any limitations in its applicability to the various technologies for which grants could be awarded under this program.

B. Project Scoring Criteria for the Rural Energy for America Grant Program (§ 5002.102(g)(1))

In scoring applications under the Rural Energy for America grant program, the proposed rule would apply the same program-specific criteria to feasibility studies as to the actual renewable energy system project or the energy efficiency improvement project. Because the program-specific priority categories and points were developed under the current program for renewable energy systems and energy efficiency improvement projects, the Agency is seeking comment on whether these criteria are appropriate for scoring feasibility studies. The Agency is also seeking comment on alternative scoring criteria for feasibility studies if the ones in the proposed rule are not appropriate. Please be sure to be specific on what criteria you propose, how they would be applied, and your rationale.

C. Minimum Funding Requirements for the Rural Energy for America Grant Program

In the current Renewable Energy System and Energy Efficiency Improvement program, a minimum grant size of $1,500 is specified for energy efficiency improvement projects and $2,500 for renewable energy system projects. In this proposed rule, the Agency is not proposing a minimum grant size for this program. The Agency seeks comment on whether there should be a minimum grant size for either or both types of projects under this program and, if so, what that level should be and why. If the Agency decides to implement a minimum grant size for either type of project, the Agency wants to make sure that it is a ''meaningful'' level; that is, that the minimum level is not so low that potential applicants would not consider applying for the grant.

D. The Grant Programs Being Included in the Proposed Rule

Earlier in this notice, the Agency provided an explanation as to how the eight grant programs were selected for inclusion in the proposed rule. The Agency is seeking comment on whether it is appropriate to include these specific grant programs and, if not, which of the grant programs should be removed and why.

E. Grant Request Relative to Remaining Available Program Funds

As proposed, the Agency would be able to select the next highest scoring application if the higher scoring application requests grant funds in excess of 25% of the remaining available funds for a nationally competed grant program. The Agency is seeking specific comment on whether the proposed threshold of 25% is appropriate and why or why not. The Agency is also seeking comment on alternative thresholds and on the applicability of such thresholds (i.e., should they be program-specific or applied to all nationally competed grant programs). Please be sure to provide the rationale for the suggested thresholds and their applicability.

F. Minimum Score for Determining Applications To Be Eligible

The Agency is seeking comment as to whether applications must obtain a minimum score in order to be considered eligible for funding and, if so, what that minimum score should be. At this stage, the Agency has considered a minimum score in the vicinity of 40 points, but has decided at this point not to include a specific number in the proposed rule. By including such a minimum score, applicants would be given an understanding of how an application must score to receive consideration. However, the Agency is also concerned about the merits of establishing such a uniform score upfront without consideration of the availability of funds as well as the size and quality of the applicant pool.

If the Agency were to establish a minimum score, the Agency would consider including a provision that would allow it to adjust the minimum score each year through the issuance of a notification (e.g., a **Federal Register** notice).

List of Subjects

7 CFR Part 1703

Community development, Grant programs—education, Grant programs—health care, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1780

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

7 CFR Part 3570

Accounting, Administrative practice and procedure, Conflicts of interests, Environmental impact statements, Fair housing, Grant programs—housing and community development, Loan programs—housing and community development, Rural areas, Subsidies.

7 CFR Part 4280

Rural development assistance, Economic development, Energy, Grant programs, Renewable energy systems, Energy efficiency improvements, Rural areas.

7 CFR Part 4284

Agricultural commodities, Agriculture innovation centers, Agricultural marketing research, Business and Industry, Grant programs—housing and community development, Rural areas, Rural development, Value-added.

7 CFR Part 5002

Accounting, Agriculture innovation centers, Community development, Economics, Energy efficiency improvements, Environmental impact statements, Renewable energy systems, Rural areas, Rural development, Value-added, Waste treatment and disposal, Water supply.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301 and 7 U.S.C. 1989, Chapters XVII, XXXV, and XLII of title 7 of the Code of Federal Regulations are proposed to be amended and Chapter L is proposed to be amended as follows:

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1703—Rural Development

1. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Subpart E of Part 1703 [Removed and reserved]

2. Subpart E of part 1703 is removed and reserved.

CHAPTER XVII—RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 1780—Rural Development

3. The authority citation for part 1780 continues to read as follows:

Authority: U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A of Part 1780 [Amended]

4. Section 1780.10 is amended by removing paragraph (b)(4) and revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 1780.10 Limitations.

(a) * * *

(b) * * *

(1) * * *

(2) Pay any costs of a project when the median household income of the service area is more than 100 percent of the nonmetropolitan median household income of the State; and

(3) Pay project costs when other loan funding for the project is not at reasonable rates and terms.

* * * * *

CHAPTER XXXV—RURAL HOUSING SERVICE, DEPARTMENT OF AGRICULTURE

PART 3570—Community Programs

5. The authority citation for part 3570 continues to read as follows:

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

Subpart B of Part 3570 [Amended]

6. Section 3570.51 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 3570.51 General.

(a) * * *

(1) The provisions of 7 CFR part 3570, subpart B, do not apply to grants made under 7 CFR part 5002.

(2) Grants made in combination with loans that are issued under either 7 CFR part 1942, subpart A or 7 CFR part 5001 shall be subject to the requirements of 7 CFR part 3570, subpart B.

* * * * *

CHAPTER XLII—RURAL BUSINESS—COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4280—LOANS AND GRANTS

7. The authority citation for part 4280 continues to read as follows:

Authority: 7 U.S.C. 8106.

Subpart B of Part 4280 [Amended]

8. Section 4280.101 is amended by adding paragraphs (a)(1) and (a)(2) to read as follows:

§ 4280.101 Purpose.

(a) * * *

(1) The provisions of 7 CFR part 4280 ,subpart A, do not apply to grants made under 7 CFR part 5002.

(2) Grants made in combination with loans that are issued under 7 CFR part 4280, subpart D, shall be subject to the requirements of 7 CFR part 4280, subpart A.

* * * * *

PART 4284—GRANTS

9. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart F also issued under 7 U.S.C. 1932(e).

Subpart G also issued under 7 U.S.C. 1926(a)(11).

Subpart J also issued under 7 U.S.C. 1621 note.

Subpart K also issued under 7 U.S.C. 1621 note.

Subpart F of Part 4284 [Removed and Reserved]

10. Subpart F of part 4284 is removed and reserved.

Subpart J of Part 4284 [Removed and Reserved]

11. Subpart J of part 4284 is removed and reserved.

12. Chapter L consisting of parts 5000 through 5099 is established and a new part 5002 is added to read as follows:

CHAPTER L—RURAL DEVELOPMENT, DEPARTMENT OF AGRICULTURE

PART 5002—GRANTS

Subpart A—General Provisions

Sec.

5002.1 Purpose and scope.
5002.2 Definitions and abbreviations.
5002.3 Appeal rights.
5002.4 Exception authority.
5002.5 Compliance with other Federal laws.
5002.6 State laws, local laws, and regulatory commission regulations.
5002.7 Environmental requirements.
5002.8 Forms, regulations, and instructions.
5002.9—5002.14 [Reserved]

Funding and Programmatic Change Notifications

5002.15 Notifications.
5002.16—5002.19 [Reserved]

Eligibility

5002.20 Applicant eligibility.
5002.21 Ineligible applicants.
5002.22 Project eligibility.
5002.23 Ineligible projects and purposes.
5002.24—5002.29 [Reserved]

Applying for a Grant

5002.30 Applying for a grant.
5002.31 Preapplications.
5002.32 Applications.
5002.33—5002.39 [Reserved]

Processing and Scoring Applications

5002.40 Processing applications.
5002.41 Application withdrawal.
5002.42 Scoring applications.
5002.43—5002.49 [Reserved]

Awarding Grants

5002.50 Award process.
5002.51—5002.59 [Reserved]

Grant Agreements and Conditions

5002.60 Actions prior to grant closing or start of construction, whichever comes first.
5002.61 Grant agreement.
5002.62 Use of remaining funds.
5002.63—5002.69 [Reserved]

Post Award Activities and Requirements

5002.70 Monitoring and reporting program performance.
5002.71 Programmatic changes and budget revisions.
5002.72 Transfer of obligations.
5002.73—5002.79 [Reserved]

Grant Close Out and Related Activities

5002.80 Grant close out and related activities.
5002.81—5002.100 [Reserved]

Subpart B—Program Specific Provisions

5002.101 Community Facilities.
5002.102 Rural Energy for America Grants.
5002.103 Rural Cooperative Development Grants.
5002.104 Distance Learning and Telemedicine Grants.
5002.105 Value-Added Producer Grants.
5002.106 Water and Waste Disposal Facilities Grants.
5002.107 Economic Impact Initiatives Grants.
5002.108 Tribal College Grants.
5002.109—5002.200 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1926(a)(1); 7 U.S.C. 1932(a); 7 U.S.C. 8106.

Subpart A—General Provisions

§ 5002.1. Purpose and scope.

(a) *General.* The purpose and scope of this part is to simplify, standardize, and improve the administration and implementation of grants and cooperative agreements made by Rural Development. This part applies to those grant and cooperative agreement programs specified in subpart B of this part.

(b) *Terminology applicable to subpart A.* This subpart's substantive rules are the same for grants and cooperative agreements. Therefore, certain

simplified terminology is used in the text. Specifically in all portions of this subpart:

(1) Each provision that applies to ''grants'' also applies to ''cooperative agreements,'' even if the latter term does not appear in the provisions unless the context otherwise means specifically cooperative agreement.

(2) Each provision that applies to ''applicants'' for grants or ''grantees'' applies to ''applicants'' for cooperative agreements or ''recipients of cooperative agreements,'' even if the latter terms do not appear in the provision unless the context otherwise means specifically a cooperative agreement applicant or recipient.

(3) The term ''grantee'' or ''applicant'' refers equally to recipients or applicants of grants and recipients or applicants of cooperative agreements.

(4) The term ''Agency'' refers equally to a Rural Development agency that awards a grant and to one that awards a cooperative agreement.

(5) The term ''subgrant'' refers equally to certain awards under grants and to the same kinds of awards under cooperative agreements.

(c) *Applicability*. (1) *''Grant only'' applications*. Unless otherwise specified in another part, the requirements of this part apply only to applicants submitting a ''grant only'' application. Any grant that is requested in combination with a loan (a loan and grant combination) will be determined based on the process associated with loan selection.

(2) *Tribal College Grants*. Unless otherwise specified in § 5002.108, the provisions in § 5002.15 through § 5002.59 do not apply to Tribal College grants.

(d) *Incorporation by reference*. Unless specifically stated, this part incorporates by reference the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

(e) *Relationship between subpart A and subpart B requirements*. All grant programs subject to this part are subject to the requirements and definitions specified in subpart A, unless there is a program specific provision or definition in subpart B that overrides the corresponding subpart A provision. Such a subpart B provision may modify the scope of or replace entirely the corresponding subpart A provision.

§ 5002.2 Definitions and abbreviations.

Each term used in this part shall have the meaning as found in the Departmental regulations and in this part. If a term is defined in this part and in the Departmental regulations, such term shall have the meaning as found in this part. If there is a conflict in how a term is defined in this part and in how it is defined in the Departmental regulations, it shall have the meaning as defined in this part.

(a) *Definitions*.

1994 Institution. A college identified as such for purposes of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

Administrator. Each of the Administrators of the Rural Utilities Service, the Rural Business-Cooperative Service, the Rural Housing Service or their respective designees or successors, as appropriate.

Agency identified target areas. An identified area in the State strategic plan or other plans developed by the Rural Development State Director.

Agency. The Rural Housing Service or successor for the programs it administers; the Rural Utilities Service or successor for the programs it administers; and the Rural Business–Cooperative Service or successor for the programs it administers.

Agricultural commodity. An unprocessed product of farms, ranches, nurseries, and forests. Agricultural commodities include: Livestock, poultry, and fish; fruits and vegetables; grains, such as wheat, barley, oats, rye, triticale, rice, corn, and sorghum; legumes, such as field beans and peas; animal feed and forage crops; seed crops; fiber crops, such as cotton; oil crops, such as safflower, sunflower, corn, and cottonseed; trees grown for lumber and wood products; nursery stock grown commercially; Christmas trees; ornamentals and cut flowers; and turf grown commercially for sod. Agricultural commodities do not include horses or animals raised as pets, such as cats, dogs, and ferrets.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

Agricultural producer group. An organization that represents independent producers, whose mission includes working on behalf of independent producers and the majority of whose membership and board of directors are comprised of independent producers.

Agricultural product. Plant and animal products and their by-products to include crops (including farming); livestock (including ranching); forestry products, hydroponics; nursery stock; aquaculture; fish and seafood products.

Annual receipts. The total income or gross income (sole proprietorship) plus cost of goods sold.

Biomass. Any organic material that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or un-segregated solid waste.

Commercially available. A system that has a proven operating history of viability of at least one year, specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

Cooperative agreement. A legal instrument reflecting a relationship between the Agency and a State, a local government, or other recipient when:

(i) The principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Agency; and

(ii) Substantial involvement is expected between the Agency and the State, local government, or other recipient when carrying out the activity contemplated in this agreement.

Cooperative development. The startup, expansion or operational improvement of a cooperative to promote development in rural areas of services and products, processes that can be used in the marketing of products, or enterprises that add value to farm products through processing or marketing activities. Development activities may include, but are not limited to, technical assistance, research services, educational services and

advisory services. Operational improvement includes making the cooperative more efficient or better managed.

Data terminal equipment. Equipment that converts user information into data signals for transmission, or reconverts the received data signals into user information, and is normally found on the terminal of a circuit and on the premises of the DLT end user.

Day. Calendar day, unless otherwise stated.

Departmental regulations. The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

Distance learning. A telecommunications link to a DLT end user through the use of eligible equipment to:

(i) Provide educational programs, instruction, or information originating in one area, whether rural or not, to students and teachers who are located in a rural area; or

(ii) Connect teachers and students, located in one area, whether rural or not, with teachers and students that are located in a rural area.

DLT end user. One or more of the following:

(i) Rural elementary, secondary schools, and other educational institutions, such as institutions of higher education, vocational and adult training and education centers, libraries, and teacher training centers, and students, teachers and instructors using such rural educational facilities, that participate in a rural distance learning telecommunications program through a project funded under this subpart;

(ii) Rural hospitals, primary care centers or facilities, such as medical centers, nursing homes, and clinics, and physicians and staff using such rural medical facilities, that participate in a rural telemedicine program through a project funded under this subpart; or

(iii) Other rural community facilities, institutions, or entities that receive distance learning or telemedicine services.

DLT end-user site. A facility that is part of a network or telecommunications system that is utilized by DLT end users.

Eligible project costs. The total project costs that are eligible to be paid with program funds.

Emerging market. A new or developing market.

Energy assessment. An assessment conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency by analyzing energy bills and briefly surveying the target building, machinery, or system. The assessment identifies and provides a savings and cost analysis of low-cost/no-cost measures. The assessment will estimate the overall costs and expected energy savings from these improvements, and dollars saved per year. The assessment will estimate weighted-average payback period in years.

Energy audit. An audit conducted by a certified energy manager or professional engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The audit will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions similar to but in more detail than an energy assessment.

Energy efficiency improvement. Improvements to a facility, building, or process that reduces energy consumption, or reduces energy consumed per square foot.

Equivalent dwelling unit. The level of service provided to a typical rural residential dwelling.

Essential community facilities. The physical structure financed or the resulting service provided to primarily rural residents that is operated on a non-profit basis and that combined or severally must:

(i) Perform or fulfill a function customarily provided by a local unit of government;

(ii) Be a public improvement needed for the orderly development of a rural community;

(iii) Not include a project that benefits a single individual or group of single individuals as opposed to a class within a community;

(iv) Not include private affairs or commercial or business undertakings (except for limited authority for industrial parks, agricultural exposition centers, fair grounds, farmers markets, assisted living facilities, adult day care facilities, and child care facilities) unless it is a minor part of the total facility; and

(v) Be within the area of jurisdiction or operation for eligible public bodies or a similar local rural service area of a non-profit corporation.

Facility. The physical structure financed by the Agency or the resulting service provided to rural residents.

Farm or ranch. Any place from which $1,000 or more of agricultural products (crops and livestock) were raised and sold or would have been raised and sold during the previous year, but for an event beyond the control of the farmer or rancher.

Farmer or rancher cooperative. A farmer or rancher owned and controlled business from which benefits are derived and distributed equitably on the basis of use by each of the farmer or rancher owners.

Feasibility study. An analysis by a qualified consultant of the economic, market, technical, financial, and management capabilities of a proposed project, venture, or business in terms of its expectation for success.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cash flows to financially sustain a project over the long term.

Fiscal year. Means the Federal government's fiscal year.

Grant. A legal instrument reflecting a relationship between the Agency and a State, a local government, or other recipient when the principal purpose of the relationship is to transfer a thing of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Agency.

Hub. A facility that is part of a network or telecommunications system that provides educational or medical services to DLT end-user sites.

In-kind contributions. Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are provided by the applicant or a third-party entity consistent with this part. The identifiable value of goods and services must be considered eligible expenditures, must be used for eligible purposes of the grant program, and must directly benefit the project.

Independent producers. Agricultural producers, individuals or entities (including for-profit and non-profit corporations, limited liability companies (LLCs), partnerships, or limited liability partnerships (LLPs), where the entities are solely owned or controlled by agricultural producers who own a majority ownership interest in the agricultural product that is produced. Independent producers must produce and own the agricultural product to which value is being added. Producers who produce the agricultural product under contract for another entity but do not own the product produced are not independent producers. Independent producers must

supply product they produce and own the value-added venture.

Indian tribe. This term has the meaning given it in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

Institution of higher education. This term has the meaning given it in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)).

Instructional programming. Educational material, including computer software, that would be used for educational purposes in connection with eligible equipment but does not include salaries, benefits, and overhead of medical or educational personnel.

Interactive video equipment. Equipment used to produce and prepare for transmission audio and visual signals from at least two distant locations so that individuals at such locations can orally and visually communicate with each other. Such equipment includes monitors, other display devices, cameras or other recording devices, audio pickup devices, and other related equipment.

Local exchange carrier. A commercial, cooperative or mutual-type association, or public body that is engaged in the provision of telephone exchange service or exchange access.

Majority-controlled producer-based business venture. A venture where more than 50 percent of the ownership and control is held by independent producers, or, partnerships, LLCs, LLPs, corporations, or cooperatives that are themselves 100 percent owned and controlled by independent producers.

Matching funds. The applicant's contribution for approved purposes in accordance with the Departmental regulations.

Non-profit. Any entity or organization no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

Passive investor. A third-party equity investor that does not actively participate in management and operation decisions of the business entity as evidenced by a contractual arrangement.

Planning grants. Grants to facilitate the development of a defined program of economic activities to determine the viability of a potential value-added venture, including feasibility studies, marketing strategies, business plans and legal evaluations.

Post-application. The period of time after the Agency has received an essentially completed application. An ''essentially completed'' application is an application that contains all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

Poverty line. The level of income for a family of four, as determined consistent with criteria established by the Department of Health and Human Services or the Department of Housing and Urban Development, as determined by the Agency.

Pre-commercial technology. Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available.

Product segregation. Physical separation of a product or commodity from similar products. Physical separation requires a barrier to prevent mixing with the similar product.

Public body. A municipality, county, or other political subdivision of a State; a special purpose district; or an Indian tribe on a Federal or State reservation or other Federally-recognized Indian tribe or an organization controlled by any of the above.

Qualified consultant. An independent, third-party possessing the knowledge, expertise, and experience to perform in an efficient, effective, and authoritative manner the specific task required.

Ranking date. A specified date on or after which the Agency will rank all scored applications for a specific grant program to create a priority list of applications. Grant programs may have more than one ranking date.

Renewable biomass.

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(B) would not otherwise be used for higher-value products; and

(C) are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of that section; or

(ii) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

Renewable energy.

(i) Energy derived from a wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric source;

(ii) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (i) of this definition.

Renewable energy system. A system that produces or produces and delivers usable energy from a renewable energy source.

Rural or rural area.

(i) For purposes of providing Renewable Energy/Energy Efficiency and Rural Cooperative Development grants, rural and rural area are defined as any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area.

(ii) For the purpose of providing Community Facilities and Economic Impact Initiatives grants, rural and rural area are defined as any area not in a city, town, or Census Designated Place with a population of more than 20,000 inhabitants according to the latest decennial census of the United States.

(iii) For the purpose of providing Distance Learning and Telemedicine grants, rural and rural area are defined as any area not within the boundary of (A) an urbanized area or (B) an urban cluster in excess of 20,000 inhabitants according to the latest decennial census of the United States.

(iv) For the purpose of providing Water and Waste Disposal facilities grants, rural and rural area are defined as any area not in a city, town, or Census Designated Place with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

(v) For cooperative agreements, the definition of rural or rural area is the definition for the program which provides the source of funds for the cooperative agreement.

(vi) For the purposes of this definition, cities and towns are

incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State. For Puerto Rico, Census Designated Place (CDP), as defined by the U.S. Census Bureau, will be used as the equivalent to city or town. For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

Rural community facility. A facility such as a school, library, learning center, training facility, hospital, or medical facility that provides educational or health care benefits primarily to residents of rural areas.

Rural Development. A mission area of the Under Secretary for Rural Development within the U.S. Department of Agriculture (USDA), which includes Rural Housing Service, Rural Utilities Service, and Rural Business-Cooperative Service and their successors.

Service area. The area reasonably expected to be served by the project/facility.

Small business. An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards by the North American Industry Classification System found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independent of direct Government control. With the exception of the entities described above, all other non-profit entities are excluded.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State director. The term ''State Director'' means, with respect to a State, the Director of the Rural Development State Office.

State office. USDA Rural Development offices located in each state.

State program official. The Agency official at the State level who has been delegated the responsibility of administering the water and waste disposal facilities programs under this regulation for a particular State or States.

State strategic plan. A plan developed by each State for Rural Development initiatives and the type of assistance required. Plans shall identify goals, methods, and benchmarks for measuring success.

Statewide nonmetropolitan median household income. The median household income of the State's nonmetropolitan counties and portions of metropolitan counties outside of cities, towns or places of 50,000 or more population.

Technical assistance. Assistance in learning to manage, operate, or use equipment or systems; and studies, analyses, designs, reports, manuals, guides, literature, or other forms of creating, acquiring, or disseminating information.

Telecommunications systems plan. The plan submitted by an applicant in accordance with § 1703.125 for grants.

Telecommunications terminal equipment. The assemblage of telecommunications equipment at the end of a circuit or path of a signal, including but not limited to facilities that receive or transmit over the air broadcast, satellite, and microwave, normally located on the premises of the DLT end user, that interfaces with telecommunications transmission facilities, and that is used to modify, convert, encode, or otherwise prepare signals to be transmitted via such telecommunications facilities, or that is used to modify, reconvert, or carry signals received from such facilities, the purpose of which is to accomplish the goal for which the circuit or signal was established.

Telecommunications transmission facilities. Facilities that transmit, receive, or carry voice, video, or data between the telecommunications terminal equipment at each end of the telecommunications circuit or path. Such facilities include microwave antennae, relay stations and towers, other telecommunications antennae, fiber-optic cables and repeaters, coaxial cables, communication satellite ground station complexes, copper cable electronic equipment associated with telecommunications transmissions, and similar items.

Telemedicine. A telecommunications link to a DLT end user through the use of eligible equipment that electronically links medical professionals at separate sites in order to exchange health care information in audio, video, graphic, or other formats for the purpose of providing improved health care services primarily to residents of rural areas.

Total project cost. The sum of all costs associated with a completed project.

Tribal college or university. An institution of higher education that is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe, and includes an institution listed in the Equity in Educational Land Grant Status Act of 1994.

Used equipment. Any equipment that has been used in any previous application and is provided in an ''as is'' condition.

Value-added. The incremental value that is realized by the producer from an agricultural commodity or product as the result of (i) A change in its physical state, (ii) differentiated production or marketing, as demonstrated in a business plan, (iii) product segregation, or (iv) is aggregated and marketed as a locally-produced agricultural food product. Also, the economic benefit realized from the production of farm or ranch-based renewable energy, including E–85 fuel. Incremental value may be realized by the producer as a result of either an increase in value to buyers or the expansion of the overall market for the product. Examples include milling wheat into flour, slaughtering livestock or poultry, making strawberries into jam, the marketing of organic products, an identity-preserved marketing system, wind or hydro power produced on land that is farmed and collecting and converting methane from animal waste to generate energy. Identity-preserved marketing systems include labeling that identifies how the product was produced and by whom.

Very small business. A business with fewer than 15 employees and less than $1 million in annual receipts.

Working capital grants. Grants to provide funds to operate ventures and pay the normal expenses of the venture that are eligible uses of grant funds.

(b) *Abbreviations:*

CDP—Census Designated Place.

DLT—Distance Learning and Telemedicine.

EDU—Equivalent Dwelling Unit.

LLC—Limited liability company.

LLP—Limited liability partnership.

NSLP—National School Lunch Program.

RUS—The Rural Utilities Service or a successor agency, an agency within USDA established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178), successor to the Rural Electrification Administration and successor to the Farmer's Home Administration and the Rural Development Administration with respect to certain water and waste disposal loan and grant programs.

SBA—Small Business Administration.

USDA—United States Department of Agriculture.

§ 5002.3 Appeal rights.

A person may seek a review of an Agency decision under this part from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title.

§ 5002.4 Exception authority.

Except as specified in paragraphs (a) through (c) of this section, the applicable Administrator may make exceptions to any requirement or provision of this part, if such exception is necessary to implement the intent of the authorizing statute in a time of national emergency or in accordance with a Presidentially-declared disaster, or, on a case-by-case basis, when such an exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(a) *Applicant eligibility*. No exception to applicant eligibility can be made.

(b) *Project eligibility*. No exception to project eligibility can be made.

(c) *Rural area definition*. No exception to the definition of rural area can be made.

§ 5002.5 Compliance with other Federal laws.

Applicants must comply with other applicable Federal laws including Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, Fair Housing Act, and the Civil Rights Act of 1964.

§ 5002.6 State laws, local laws, regulatory commission regulations.

If there are conflicts between this part and State or local laws or regulatory commission regulations, the provisions of this part will control.

§ 5002.7 Environmental requirements.

(a) All grants awarded under this part are subject to the environmental requirements in subpart G of 7 CFR part 1940 or 7 CFR 1794, as applicable, or successor regulations.

(b) The applicant must not take any action or incur any obligations during the time of application or application review and processing that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the applicant takes such adverse actions, the project will be ineligible for funding under this part.

§ 5002.8 Forms, regulations, and instructions.

Copies of all forms, regulations, instructions, and other materials related to programs referenced in this part may be obtained through the Agency.

§§ 5002.9—5002.14 [Reserved]

Funding and Programmatic Change Notifications

§ 5002.15 Notifications.

In implementing this part, the Agency will issue notifications addressing funding and programmatic changes, as specified in paragraphs (a) and (b) of this section, respectively, for each grant program under this part. The methods that the Agency will use in making these notifications is specified in paragraph (c) of this section, and the timing of these notifications is specified in paragraph (d) of this section.

(a) *Funding*. The Agency will issue notifications concerning funding for each program as described in paragraphs (a)(1) through (3) of this section.

(1) For each Nationally-competed grant program, the funding level and the minimum and maximum grant amount.

(2) For each State-allocated grant program, the funding level and minimum and maximum grant amount, as proposed by State Directors and as approved by the Agency.

(3) Any additional funding information associated with an individual grant program as determined by the Agency.

(b) *Programmatic changes*. For each program, as applicable, the Agency will issue notifications of the programmatic changes specified in paragraphs (b)(1) through (5) of this section.

(1) The set of Administrator priority categories or their point allocation, if the provisions specified in subparts A and B are not to be used for awarding Administrator points.

(2) The set of State Director priority categories or their point allocation, if the provisions specified in subparts A and B are not to be used for awarding State Director points, as proposed by State Directors and as approved by the Agency.

(3) Additional reports that are generally applicable across projects within a program associated with the monitoring of and reporting on project performance.

(4) Any change in a program's ranking dates.

(5) For programs with a specified application date, any change in the application date.

(c) *Notification methods*. The Agency will issue the information specified in paragraphs (a) and (b) of this section as specified in paragraphs (c)(1) through (3) of this section.

(1) For Nationally-competed grant programs covered by this part, the Agency will issue one or more **Federal Register** notices.

(2) For State-allocated grant programs covered by this part, the Agency will make the information available on the Agency's Web site.

(3) For both Nationally-competed grant programs and State-allocated grant programs, all information will be available at any Rural Development office.

(d) *Timing*. The Agency will make the information specified in paragraphs (a) and (b) of this section available as specified in paragraphs (d)(1) through (3) of this section.

(1) The Agency will make the information specified in paragraph (a) of this section available each fiscal year.

(2) The Agency will make the information specified in paragraphs (b)(1) and (b)(2) of this section available at least 30 days prior to the first ranking date in the year or the application deadline, as applicable.

(3) The Agency will make the information specified in paragraphs (b)(3) through (b)(5) of this section available on an as needed basis.

§ 5002.16—5002.19 [Reserved]

Eligibility

§ 5002.20 Applicant eligibility.

To be eligible for a grant under this part, an applicant must meet the applicant eligibility requirements for the applicable grant program as specified in subpart B of this part and the requirements specified in paragraphs (a) and (b) of this section.

(a) *Citizenship*.

(1) Individual applicants must:

(i) be citizens of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa, or

(ii) reside in the U.S. after legal admittance for permanent residence.

(2) Entities other than individuals must be at least 51 percent owned by persons who are either citizens as identified under paragraph (a)(1)(i) of this section or legally admitted permanent residents residing in the U.S.

(b) *Legal authority and responsibility.* Each applicant must have, or obtain, the legal authority necessary to carry out the purpose of the grant.

§ 5002.21 Ineligible applicants.

(a) Consistent with the department regulations, an applicant is ineligible if the applicant is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

(b) An applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt.

§ 5002.22 Project eligibility.

To be eligible for a grant under this part, a project or purpose must, at a minimum, meet the project or purposes eligibility requirements for the applicable grant program as specified in subpart B of this part. In addition, the project or purpose must meet each of the requirements specified in paragraphs (a) through (c) of this section, as applicable.

(a) The project or purpose must primarily serve a rural area.

(b) For those projects and purposes that acquire or improve real or personal property, the applicant must be the owner of the property or have leasehold interest acceptable to the Agency in the property and control the revenues and expenses of the project, including operation and maintenance.

(c) For projects and purposes that are determined by a service area, boundaries for the proposed service area must be chosen in such a way that no user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude:

(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time, and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof. Additionally, the applicant must publicly announce a plan for extending service to areas not initially receiving service and must provide written notice to potential users located in such areas.

§ 5002.23 Ineligible projects and purposes.

Grants under this part must not be used for:

(a) Investment or arbitrage, or speculative real estate investment.

(b) Prostitution or projects generating income from activities of a prurient sexual nature.

(c) Any project eligible for Rural Rental Housing and Rural Cooperative Housing loans under sections 515, 521, and 538 of the Housing Act of 1949, as amended.

(d) Any facility used primarily for the purpose of housing Federal or State agencies.

(e) Finders', packagers', or loan brokers' fees. Pay costs of preparing the application package for funding under this program.

(f) Any project deriving income from illegal drugs, drug paraphernalia, or any other illegal product or activity.

(g) To pay the applicant for the rental of equipment or machinery owned by the applicant.

(h) The payment of either a judgment or a debt owed to the United States.

(i) Any project that creates, directly or indirectly, a conflict of interest or an appearance of a conflict of interest.

(j) Properties to be used for commercial rent when the grantee has no control over tenants and services offered except for industrial-site infrastructure development and limited sections of essential community facilities when the activity in the leased space is related to and enhances the primary purpose for which the facility is being established by the grantee.

(k) Any project located within the Coastal Barriers Resource System that does not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.*

(l) Any project located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program unless the project is an integral part of a community's flood control plan.

(m) Fund political activity.

(n) Any other similar project or purpose that the Agency determines is ineligible for funding under this part and publishes in a **Federal Register** notice.

§§ 5002.24—5002.29 [Reserved]

Applying for a Grant

§ 5002.30 Applying for a grant.

(a) *Preapplications.* Unless required under the Departmental regulations, the public has the option of submitting a preapplication as specified in § 5002.31. The submission of a preapplication, or the lack thereof, does not affect in any way the scoring of the subsequent application. In addition, applicants who submit a preapplication do not receive any priority for funding under this part.

(b) *Conformance with § 5002.32.* All applicants are required to submit an application, as specified in § 5002.32.

(c) *Filing instructions.* Unless otherwise specified in a notification issued under § 5002.15, the following requirements apply to all grant preapplications and applications submitted under this part.

(1) *When to submit.*

(i) *Preapplications.* For grant programs with an open application period, preapplications for all programs may be submitted at any time. For grant programs with an application deadline, preapplications must be submitted at least 90 days before the application deadline.

(ii) *Applications.* For grant programs with an open application period, applications may be submitted at any time. For grant programs with an application deadline, applications must be received on or before the application deadline to receive consideration for funding for that fiscal year.

(iii) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(2) *Where to submit.* All preapplications and applications may be submitted to any Rural Development office or on line through grants.gov.

(3) *Format.* Preapplications and applications may be submitted as hard copy or electronically via grants.gov. If submitted as hard copy, an original and one hard copy of the entire application and supporting documentation must be submitted.

§ 5002.31 Preapplications.

Unless otherwise excepted, the provisions of this section apply to all programs under this part.

(a) Submittal of a preapplication is optional under this part unless it is otherwise required under the Departmental regulations.

(1) When submitting a preapplication, all applicants must comply with the Departmental regulations, except as provided in paragraph (a)(2) of this section.

(2) In lieu of filing SF 424, ''Application for Federal Assistance,'' a member of the public may instead submit a written request for an eligibility determination alone. Members of the public should contact a Rural Development office to obtain a list of the items needed to make an eligibility assessment for the specific grant program in which the member is interested.

(b) The Agency will review all preapplications to make an assessment as to applicant and project eligibility. If the preapplication is submitted by a government applicant as required under the Departmental regulations, the Agency will make its assessment in accordance with the Departmental regulations. If the preapplication is submitted on a voluntary basis, the Agency will make an informal assessment of both the applicant's eligibility and the project's eligibility. In all instances, the Agency will then provide a written response to the applicant on its assessment.

§ 5002.32 Applications.

(a) *Application forms.* The following application forms, as applicable, must be used in applying for a grant under this part.

(1) Form SF–424, ''Application for Federal Assistance.''

(2) Form SF–424A, ''Budget Information—Non-Construction Programs.''

(3) Form SF–424B, ''Assurances—Non-Construction Programs.''

(4) Form SF–424C, ''Budget Information—Construction Programs.''

(5) Form SF–424D, ''Assurances—Construction Programs.''

(b) *Other forms and instructions.* The Agency will make available to the public the necessary forms and instructions for filing an application on a program-specific basis. These forms and instructions may be obtained from any Rural Development office, Rural Development National Headquarters, and the Agency's Web site.

§§ 5002.33—5002.39 [Reserved]

Processing and Scoring Applications

§ 5002.40 Processing applications.

(a) *Initial review.* Upon receipt of an application, the Agency will conduct a review to determine if the applicant and project are eligible and if the project is feasible or is likely to be feasible with regard to financial, technical, and environmental feasibility and sustainability of the project. If applicant or project eligibility has already been determined through the submittal of a required preapplication, the Agency will review the application to ensure no changes have occurred that would affect eligibility.

(b) *Notifications.* After the review in paragraph (a) of this section has been conducted, the Agency will notify the applicant in writing of the Agency's findings. If the Agency has determined that either the applicant or project is ineligible or that the project is not likely to be feasible, it will include in the notification the reason(s) for its determination(s).

(c) *Resubmittal by applicants.* Applicants may submit revised applications to the Agency in response to the notification received under paragraph (b) of this section. For grant programs with an open application period, each revised grant application will be processed by the Agency at the next applicable ranking date for the applicable grant program. For grant programs with a specified application deadline, each revised grant application will be processed by the Agency if it is received on or before the application deadline for that grant program. If such revised applications are not received by the specified application deadline for the grant program, the Agency will not process the application.

(d) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination.

§ 5002.41 Application withdrawal.

During the period between the submission of an application and the execution of documents, the applicant must notify, in writing, the Agency if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so notifies the Agency, the selection will be rescinded or the application withdrawn.

§ 5002.42 Scoring applications.

(a) *General.* The Agency will only score applications for which it has determined that the applicant and project are eligible and that the project is feasible or is likely to be feasible.

(1) For grant programs with an open application period, each such application the Agency receives in a Federal fiscal year will be scored in the fiscal year in which it was submitted, unless it is received after the last ranking date in the fiscal year for that program. If an application is received after the last ranking date of the fiscal year, the Agency will score the application no later than the first ranking date of the next fiscal year. Such applications will be scored based on the priority categories and points effective for that next fiscal year.

(2) For grant programs with an application deadline, each such application the Agency receives on or before the application deadline in a fiscal year will be scored in the fiscal year in which it was received. All applications received after a program's application deadline will not be considered.

(b) *Scoring.* The Agency will score applications for each grant program based on the priority categories and their associated points using the procedures specified in subpart B. All applications for grants under this part will be scored based on the information supplied by the applicant at the time the applicant submits the application to the Agency.

(1) *Administrator priority categories.* Paragraphs (b)(1)(i) through (vi) of this section present the list of Administrator priority categories that a grant program may consider in awarding Administrator points to applications. The specific set of Administrator priority categories that each program will use is specified in subpart B. The Agency may elect to use a different set of Administrator priority categories than specified in subpart B, if it issues a notification in accordance with § 5002.15. However, the Agency cannot add to the list of priority categories specified in this paragraph.

(i) Unserved or underserved areas.

(ii) Geographic diversity.

(iii) Emergency conditions.

(iv) To accomplish the mission area's plans, goals, and objectives.

(v) Public health and safety.

(vi) Presidential initiatives.

(2) *State Director priority categories.* Paragraphs (b)(2)(i) through (x) of this section present the list of State Director priority categories that a grant program may consider in awarding State Director points to applications. The specific set of State Director priority categories that each program will use is specified in subpart B. The Agency may elect to use a different set of State Director priority categories than specified in subpart B, if it issues a notification in accordance with § 5002.15. However, the Agency cannot add to the list of priority categories specified in this paragraph.

(i) Persistent poverty counties and out-migration counties.

(ii) Unserved or underserved areas.

(iii) Geographic diversity.

(iv) Emergency conditions.

(v) State, local, or regional governmental, and Tribal strategic plans and goals (must be consistent with program goals and objectives).

(vi) To accomplish the mission area's plans, goals, and objectives.

(vii) Leveraging.

(viii) Loss of essential services.

(ix) Public health and safety.

(x) Presidential initiatives.

§§ 5002.43—5002.49 [Reserved]

Awarding Grants

§ 5002.50 Award process.

(a) *Ranking of applications.* All scored applications for a program will be ranked by the Agency on or after each ranking date, as specified in subpart B, to create a priority list of scored applications for that program.

(1) If a ranking date falls on a weekend or Federally-observed holiday, the ranking date will be the next Federal business day.

(2) All applications that are ranked in a given fiscal year will be considered for selection for funding or potential funding, as applicable, for that entire fiscal year.

(b) *Selection of applications for funding and for potential funding.*

(1) Using the priority list created under paragraph (a) of this section for each grant program, the Agency will select applications for funding or for potential funding based on the criteria specified in paragraphs (b)(1)(i) through (iii) of this section and any additional criteria specified in subpart B for a specific program. The Agency will notify, in writing, applicants whose applications have been selected for funding or for potential funding.

(i) *Ranking.* The Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for funding.

(ii) *Availability of funds.* The Agency will consider the size of the request relative to the funds that remain available to the program during the fiscal year.

(A) If there are insufficient funds during a particular funding period to select a higher scoring application, the Agency may elect to select the next highest scoring application for further processing. Before this occurs, the Administrator or State Director, as applicable, will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator or State Director, as applicable, must determine the project is financially feasible at the lower amount.

(B) If the amount of funding required is greater than 25 percent of a State's allocated funds for a State-allocated grant program, or is greater than 25 percent of a program's funds for a Nationally-competed grant program, then the Agency may elect to select the next highest scoring application for further processing, provided the higher scoring applicant is notified of this action and given an opportunity to revise their application and resubmit it.

(iii) *Availability of other funding sources.* If other financial assistance is needed for the project, the Agency will consider the availability of Rural Development loans and of other non-Rural Development funding sources. If funds for these other sources are not available at the time of selecting applications for funding or potential funding, the Agency may instead select the next highest scoring application for further processing ahead of the higher scoring application.

(2) [Reserved]

(c) *Ranked applications not funded.* The disposition of ranked applications not funded depends on whether the program has an open application period or an application deadline, and on the reason for which the application was not funded.

(1) *Grant programs with an open application period.*

(i) If a ranked application has been selected for potential funding, but has not been funded due to the Agency's lack of funds by the next ranking date or by the end of the fiscal year in which it was selected for potential funding, the Agency will carry the application forward into the next fiscal year unless the applicant otherwise notifies the Agency in writing to withdraw the application from further consideration. Such applications are not subject to re-evaluation or re-scoring, but information in the application may need to be updated.

(ii) If a ranked application has been selected for potential funding, but has not been funded because additional information is needed, the Agency will notify the applicant of what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application for further processing.

(iii) If a ranked application has not been selected for potential funding because of its ranking and the available level of funds to the Agency, it will be included in the set of applications considered in each subsequent ranking date in the fiscal year in which it was ranked until it is either selected for potential funding, funded, or the end of the fiscal year in which the application was ranked is reached, whichever occurs first. The Agency will retain the application for consideration in the next fiscal year. The Agency will provide applicants the opportunity to update their application accordingly. At a minimum, all such retained applications must be updated by the applicant as required by the Agency (e.g., financial conditions, change in supporting documentation requirements). The application will then be re-evaluated and re-scored along with new applications received for consideration for funding in the next fiscal year.

(iv) If a ranked application has not been selected for potential funding because the Agency has determined the application is non-competitive due to a very low score, the Agency will remove the application from further consideration and will so notify the applicant.

(2) *Grant programs with an application deadline.* (i) A ranked application that is not funded in the fiscal year in which it was submitted will not be carried forward into the next fiscal year. The Agency will notify the applicant in writing.

(ii) If an application has been selected for funding, but has not been funded because additional information is needed, the Agency will notify the applicant of what information is needed, including a timeframe for the applicant to provide the information. If the applicant does not provide the information within the specified timeframe, the Agency will remove the application from further consideration and will so notify the applicant.

(d) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's selection of the application, the Agency will rescind the selection and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

§§ 5002.51–5002.59 [Reserved]

Grant Agreements and Conditions

§ 5002.60 Actions prior to grant closing or start of construction, whichever occurs first.

(a) *Excess grant funds.* If there is a significant reduction in project cost or changes in project scope, the applicant's funding needs will be reassessed. Decreases in Agency funds will be based on revised project costs and current number of users. However, other factors including Agency regulations used at the time of grant approval will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(b) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds will present evidence of the commitment of these funds from such other sources. Agency funds will not be used to pre-finance funds committed to the project from other sources without prior Agency approval.

(c) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquiring all property rights necessary for the project and determining that prices paid are reasonable and fair. The Agency may require an appraisal by an independent appraiser or Agency employee.

(1) *Rights-of-way and easements.* Where applicable, applicants will obtain valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility. For user connections funded by the Agency, applicants will obtain adequate rights to construct and maintain the connection line or other facilities located on the user's property.

(2) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. The Agency may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility.

(3) *Lease agreements.* Where the right of use or control of real property not owned by the applicant is essential to the successful operation of the facility, such right will be evidenced by written agreements or contracts, acceptable to the Agency, between the owner of the property and the applicant.

§ 5002.61 Grant agreement.

(a) *Letter of conditions.* When a grant is obligated subject to conditions established by the Agency, the Agency will notify, in writing, each applicant whose application has been selected for funding using a letter of conditions, which will set out the conditions under which the grant will be made. If the applicant agrees with the conditions, the applicant must acknowledge, in writing, acceptance of the conditions. If the applicant believes that certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(b) *Grant agreement.* Each grant awarded under this part must be executed through an Agency-approved grant agreement between the Agency and the grantee and through any other documents as identified by the Agency.

(c) *Cooperative agreement.* Each cooperative agreement made under this part must be executed through an Agency-approved cooperative agreement, or similar Agency-approved document, between the Agency and the grantee and through any other documents as identified by the Agency. Cooperative Agreements must provide for significant Agency involvement.

(d) *Grant disbursements.* Grant disbursement will be made in accordance with the letter of conditions or the grant agreement as applicable.

§ 5002.62 Use of remaining funds.

Funds remaining after all costs incident to the basic project have been paid or provided for are to be handled as specified in this section.

(a) Remaining funds are not to include grantee contributions.

(b) Remaining funds may be refunded to each source in direct proportion to the amounts obtained from each source.

(c) Remaining funds may be used based on prior approval by the Agency for eligible grant purposes, provided:

(1) The use will not result in major changes to the project;

(2) The purpose of the grant remains the same; and

(3) The project remains within its original scope.

(d) Grant funds not expended after being used for eligible grant purposes will be cancelled by the Agency. Prior to the actual cancellation, the Agency will notify, in writing, the grantee of the Agency's intent to cancel the remaining funds.

§§ 5002.63–5002.69 [Reserved]

Post Award Activities and Requirements

§ 5002.70 Monitoring and reporting program performance.

The requirements specified in this section shall apply to grants made under this part.

(a) Grantees will be monitored to the extent necessary to ensure that facilities are constructed in accordance with Agency-approved plans and specifications and to ensure that funds are expended for approved purposes.

(b) Grantees shall submit performance reports that include a comparison of accomplishments with the objectives stated in the application.

(1) Performance reports shall be submitted on a semiannual basis. A final performance report is required.

(2) Additional reports shall be submitted as specified in the grant agreement, as otherwise provided in a notification issued under § 5002.15, or as specified in subpart B.

(3) The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

§ 5002.71 Programmatic changes and budget revisions.

In addition to the requirements specified in the Departmental regulations, if an application has been selected and the scope of the project changes, the Agency, at its sole discretion, may require the applicant to submit a new application. A new application will be re-ranked in accordance with this part.

§ 5002.72 Transfer of obligations.

An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant

(1) Is eligible;

(2) Has a close and genuine relationship with the original applicant; and

(3) Has the authority to receive the assistance approved for the original applicant; and

(b) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

§§ 5002.73–5002.79 [Reserved]

Grant Close Out and Related Activities

§ 5002.80 Grant close out and related activities.

In addition to the requirements specified in the Departmental

regulations, failure to submit satisfactory reports on time under the provisions of § 5002.70(b) may result in the suspension or termination of a grant. The provisions of this section apply to grants and sub-grants.

§§ 5002.81–5002.100 [Reserved]

Subpart B—Program-Specific Provisions

§ 5002.101 Community Facilities.

The Community Facilities grant program is a State-allocated grant program with an open application period.

(a) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part, as appropriate, the following requirements also apply where applicable:

(1) *Type of applicant.* The applicant must be one of the following:

(i) A public body, such as a municipality, county, district, authority, or other political subdivision of a State;

(ii) Non-profit corporation or association; or

(iii) Federally recognized Indian tribe.

(2) *Local community ties.* Applicants must have significant ties with the local rural community. Ties may be evidenced by items such as:

(i) Association with, or controlled by, a local public body or bodies or broadly based ownership and controlled by members of the community; or

(ii) Substantial public funding through taxes, revenue bonds, or other local government sources, or substantial voluntary community funding such as would be obtained through a community-wide funding campaign.

(b) *Project eligibility.* In addition to the requirements specified in § 5002.22 in subpart A of this part, the project must be an essential community facility primarily serving rural areas. In addition, the project must meet the conditions specified in paragraphs (b)(1) through (5) of this section.

(1) *Located in rural area.* Except for eligible utility-type services, such as telecommunications or hydroelectric, serving both rural and non-rural areas, the project must be located in a rural area. In the case of an eligible utility-type service project serving both rural and non-rural areas, grant funds issued under this section may be used to fund only that portion serving rural areas, regardless of the facility's location.

(2) *Household income.* The median household income of the population to be served by the proposed facility must be below the higher of the poverty line or the eligible percentage (60, 70, 80, or 90) of the State non-metropolitan median household income (paragraph (e)(2) of this section).

(3) *Economic feasibility.* All projects funded under the provisions of this section must be based on satisfactory sources of revenues as outlined in the economic feasibility requirements for the Community Facility direct loan program. The amount of grant assistance must be the minimum amount sufficient for feasibility that will provide for facility operation and maintenance, reasonable reserves, and debt repayment. The applicant's available excess funds must be used to supplement eligible project costs.

(4) *Facility operation and maintenance.* The applicant shall be responsible for operating, maintaining, and managing the facility and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be the applicant's even though the facility may be operated, maintained, or managed by a third party under contract or management agreement.

(5) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(c) *Eligible uses of grant funds.* Grant funds made under this section may be used for the purposes listed in paragraphs (c)(1)through (6) of this section.

(1) Construct, enlarge, extend, or otherwise improve essential community facilities providing essential service primarily to rural residents and rural businesses. ''Otherwise improve'' includes, but is not limited to, the following:

(i) The purchase of major equipment that will in themselves provide an essential service to rural residents; and

(ii) The purchase of existing facilities when it is necessary either to improve or to prevent a loss of service.

(2) Construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized in paragraph (c)(1) of this section.

(3) Relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (c)(1) of this section.

(4) Facilities that have no more than 25 percent of the floor space occupied by Federal Agencies, State Agencies, or other ineligible entities or purposes, when these entities enhance the primary purpose of the facility;

(5) Facilities that house State funded organizations that are typically housed in community funded facilities and offering services provided by an essential community facility;

(6) Pay the following expenses, but only when such expenses are a necessary part of a project to fund facilities authorized in paragraphs (c)(1) through (5) of this section:

(i) Reasonable fees and costs such as legal, engineering, architectural, accounting, environmental, archeological, and appraisal.

(ii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, and rights-of-way; and other evidence of land or water control necessary for development of the facility.

(iii) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(iv) Obligations for construction incurred before grant approval. Construction work should not be started and obligations for such work or materials should not be incurred before the grant is approved. However, if there are compelling reasons for proceeding with construction before grant approval, applicants may request Agency approval to pay such obligations. Such requests may be approved if the Agency determines that:

(A) Compelling reasons exist for incurring obligations before grant approval;

(B) The obligations will be incurred for authorized grant purposes;

(C) Contract documents have been approved by the Agency;

(D) All environmental requirements applicable to the Agency and the applicant have been met; and

(E) The applicant has the legal authority to incur the obligations at the time proposed, and payment of the debts will remove any basis for any mechanic's, material, or other liens that may attach to the security property.

(7) The Agency may authorize payment of such obligations at the time of grant closing. The Agency's authorization to pay such obligations, however, is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements. The applicant's request and the Agency's authorization for paying such obligations shall be in writing.

(d) *Ineligible uses of grant funds.* Grant funds under this section may not be used to fund:

(1) Initial operating expenses or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses;

(2) Construction or repair of electric generating plants, electric transmission lines, or gas distribution lines to provide services for commercial sale;

(3) Refinancing of existing indebtedness;

(4) Interest;

(5) Any cost of a project when the median household income of the population to be served by the proposed facility is above the higher of the poverty line or eligible percent (60, 70, 80, or 90) of the State non-metropolitan median household income (paragraph (e)(2) of this section);

(6) Recreational facilities, except for community parks and community wellness centers; or

(7) Any purposes restricted under the Community Facilities direct loan program.

(e) *Funding limitations and matching funds.* Grant assistance cannot exceed the applicable percentages contained in this paragraph and may be further limited due to availability of funds or by the maximum grant assistance allowable determined in accordance with paragraph (e)(1) of this section.

(1) *Maximum grant assistance.* Grant assistance cannot exceed the lower of:

(i) Qualifying percentage of eligible project cost determined in accordance with paragraph (e)(2) of this section;

(ii) Minimum amount sufficient to provide for economic feasibility as determined in accordance with paragraph (b)(3) of this section; or

(iii) Either 50 percent of the annual State allocation or $50,000, whichever is greater, unless otherwise concurred with Agency approval.

(2) *Funding limitations.* Not more than 75 percent Federal grant funds, including CF grant funds, may be used to fund a project funded with CF grant funds. Grant assistance will be provided on a graduated scale with smaller communities with the lowest median household incomes being eligible for projects with a higher proportion of grant funds. Grant assistance is limited to the following percentages of eligible project costs:

(i) 75 percent when the proposed project is:

(A) Located in a rural community having a population of 5,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 60 percent of the statewide non-metropolitan median household income.

(ii) 55 percent when the proposed project is:

(A) Located in a rural community having a population of 12,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 70 percent of the statewide non-metropolitan median household income.

(iii) 35 percent when the proposed project is:

(A) Located in a rural community having a population of 20,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 80 percent of the statewide non-metropolitan median household income.

(iv) 15 percent when the proposed project is:

(A) Located in a rural community having a population of 20,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the statewide non-metropolitan median household income.

(v) 60 percent when the proposed project is:

(A) Located in a rural community having a population of 20,000 or less; and

(B) The median household income of the population to be served by the proposed facility is below the higher of the poverty line or 90 percent of the State non-metropolitan median household income. The 60 percent grants are only available to communities affected by a catastrophic natural disaster that has resulted in a loss of 60 percent of the community's population and is located in a county designated as a major disaster area by the President.

(3) *Matching.* Funding for the balance of the project may consist of other Community Facility financial assistance, applicant contributions, or loans and grants from other sources. However, other Federal grant funds cannot be used as matching funds unless provided by other authorizing legislation. Matching funds may not be made up of in-kind contributions other than real estate donated to the project from any entity other than the grantee.

(f) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (f)(1) through (3) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (f)(1)(i) through (iii) of this section.

(i) *Population priorities.* The proposed project is located in a rural community having a population of:

(A) 5,000 or less—25 points;

(B) Between 5,001 and 12,000, inclusive—15 points; and

(C) Between 12,001 and 20,000, inclusive—10 points;

(ii) *Income priorities.* The median household income of the population to be served by the proposed project is below the higher of the poverty line or:

(A) 60 percent of the statewide non-metropolitan median household income—25 points;

(B) 70 percent of the statewide non-metropolitan median household income—15 points;

(C) 80 percent of the statewide non-metropolitan median household income—10 points; or

(D) 90 percent of the statewide non-metropolitan median household income—5 points.

(iii) *Other priorities.* If the project is for health care, for public safety, or for an educational facility, 20 points will be awarded.

(2) *Administrator priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 20 points to an application under this section to improve the geographic diversity of awardees in a fiscal year.

(3) *State director priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, a State Director may award up to 10 points to an application that meets any of the State Director priority categories to specified in § 5002.42(b)(2)(i) through (x). No more than a total of 10 State Director points may be awarded under this paragraph to an application.

(g) *Ranking applications.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after the following dates each fiscal year: December 15, March 15, July 15, and August 15.

(h) *Additional criteria for selecting applications for funding.* The Agency may select the next highest scoring application for funding before a higher scoring application when the application is a subsequent request for a previously approved project. If the

request is due to cost overruns, the cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. Cost overruns exceeding 20 percent of the development cost at time of grant approval or where the scope of the original purpose has changed will not be considered in selecting the next highest scoring application over the higher scoring application.

(i) *Public Information Process.* All grants awarded under this section are subject to the public information process required under the Community Facility direct loan program.

§ 5002.102 Rural Energy for America Grants.

The Rural Energy for America grant program is a Nationally-competed grant program with a specified application deadline.

(a) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part, an applicant must be an agricultural producer or rural small business.

(b) *Project eligibility.* In addition to the requirements specified in § 5002.22(b) and (c) in subpart A of this part, the project must also meet the criteria specified in paragraphs (b)(1) or (2) of this section. The requirement specified in § 5002.22(a) in subpart A does not apply to projects seeking a grant under this section.

(1) The project must:

(i) Be for the purchase, installation, expansion and/or other energy-related improvement of a renewable energy system or to make energy efficiency improvements;

(ii) Be located in a rural area;

(iii) Be for technology that is:

(A) Pre-commercial or commercially available, and

(B) Replicable; and

(iv) Have technical merit as determined by the Agency. Projects that the Agency determines are without technical merit are ineligible for grants.

(2) The project must be for a feasibility study for a project that meets the criteria specified in paragraph (b)(1) of this section.

(c) *Additional preapplication and application considerations.* In addition to the requirements specified in §§ 5002.30, 5002.31, and 5002.32, the following requirements apply to preapplications and applications submitted under this section.

(1) *Preapplications.* If an applicant elects to submit a preapplication, the preapplication must be received by the Agency on or before January 15 of each year to be considered. Preapplications received after January 15 will not be considered by the Agency.

(2) *Applications*—(i) *Application deadline.* Applications must be received on or before June 15 of each year to be considered for funding for that fiscal year. Applications received by the Agency after June 15 will not be considered.

(ii) *Business plans.* The business plan submitted with the application must include at least three years of pro forma financial statements.

(iii) *Simplified applications.* Applicants with projects that meet both criteria specified in paragraphs (c)(2)(iii)(A) and (B) of this section and agree to the terms specified in paragraph (c)(2)(iii)(C) of this section will be allowed to submit an application under this section that has less documentation than for applications that do not meet these two criteria. The requirements for simplified applications are available at any Rural Development office and on the Agency Web site.

(A) The total eligible project costs are $200,000 or less.

(B) The proposed project uses either commercially available renewable energy systems or energy efficiency improvements.

(C) The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.

(d) *Eligible project costs.* Grant funds under this section may only be used for those costs associated with the items listed in paragraphs (d)(1) through (9) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement. The eligible project costs also apply to a mixed business and residential project if the applicant is an agricultural producer. If the mixed business and residential project, however, is from an applicant who is a rural small business, these eligible project costs apply to the applicant's mixed business and residential project only if the residential portion of the project is less than 25 percent of the square footage of the entire project.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency improvements are allowed.

(e) *Funding limitations, matching funds, and availability of other funds*—*(1) Funding limitations.* (i) The amount of grant funds that will be made available to an eligible project under this section must not exceed 25 percent of total eligible project costs. Eligible project costs are specified in paragraph (d) of this section.

(ii) The maximum amount of grant assistance to one individual or entity will not exceed $750,000 per Federal fiscal year.

(2) *Matching funds.* (i) Without specific statutory authority, other Federal grant funds and applicant in-kind contributions cannot be used to meet the matching fund requirement. Third-party, in-kind contributions are limited to 10 percent of the matching fund requirement of the grant.

(ii) Passive investor equity contributions are acceptable for renewable energy system projects, including those that are eligible for Federal production tax credits, provided the passive investor meets the requirements of paragraph (a) of this section.

(3) *Availability of other funds.* In determining funding grant applications, the Agency will consider the following:

(i) If the size of the grant amount being requested in the application is $50,000 or less, the Agency will consider funding the application on its own merit, without consideration of other sources of funding.

(ii) If the size of the grant amount being requested in the application is more than $50,000, the Agency will consider funding the application only to the extent that:

(A) The applicant cannot obtain a loan guaranteed by the Agency for any portion of the project; or

(B) the amount being requested in the grant application is necessary for the bank to make a guaranteed loan to the applicant.

(C) If neither of the two situations described in paragraphs (e)(3)(ii)(A) or

(B) of this section apply, then the Agency will not consider the application under this rule.

(f) *Grant award amount.* In determining the amount of a grant awarded, the Agency will take into consideration the following eight criteria:

(1) The type of renewable energy system to be purchased;

(2) The estimated quantity of energy to be generated by the renewable energy system;

(3) The expected environmental benefits of the renewable energy system;

(4) The extent to which the renewable energy system will be replicable;

(5) The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under 7 U.S.C. 8105;

(6) The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity;

(7) The expected energy efficiency of the renewable energy system; and

(8) The amount of energy produced per amount of grant award.

(g) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (g)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (g)(1)(i) through (x) of this section.

(i) *Quantity of energy replaced, produced, or saved (maximum score of 13 points).* Points may only be awarded for energy replacement, energy savings, or energy generation. Points will not be awarded for more than one category. Renewable energy projects are eligible for points under either paragraph (g)(1)(i)(A) or (g)(1)(i)(C). Energy efficiency improvement projects are eligible for points under paragraph (g)(1)(i)(B) only.

(A) *Energy replacement (maximum score of 13 points).* If the proposed renewable energy system is intended primarily for self-use by the agricultural producer or rural small business and will provide energy replacement of greater than zero, but equal to or less than 25 percent, 6 points will be awarded; greater than 25 percent, but equal to or less than 50 percent, 9 points will be awarded; or greater than 50 percent, 13 points will be awarded. Energy replacement is to be determined by dividing the estimated quantity of renewable energy to be generated over a 12-month period by the estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application. The estimated quantities of energy must be converted to either British thermal units, Watts, or similar energy equivalents to facilitate scoring. If the estimated energy produced equals more than 150 percent of the energy requirements of the applicable process(es), the project will be scored as an energy generation project.

(B) *Energy savings (maximum score of 13 points).* If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be from 20 percent up to, but not including 30 percent, 6 points will be awarded; 30 percent up to, but not including 35 percent, 9 points will be awarded; or, 35 percent or greater, 13 points will be awarded. Energy savings will be determined by the projections in an energy assessment or audit. Projects with total eligible project costs of $50,000 or less that opt to obtain a professional energy audit will be awarded an additional 3 points.

(C) *Energy generation (maximum score of 13 points).* If the proposed renewable energy system is intended primarily for production of energy for sale, 13 points will be awarded.

(ii) *Environmental benefits (maximum score of 3 points).* If the purpose of the proposed system contributes to the environmental goals and objectives of other Federal, State, or local programs, 3 points will be awarded. Points will only be awarded for this paragraph if the applicant is able to provide documentation from an appropriate authority supporting this claim.

(iii) *Commercial availability (maximum score of 9 points).* If the proposed system or improvement is currently commercially available and replicable, 5 points will be awarded. If the proposed system or improvement is commercially available and replicable and is also provided with a 5-year or longer warranty providing the purchaser protection against system degradation or breakdown or component breakdown, 9 points will be awarded.

(iv) *Technical merit score (maximum score of 30 points).* The Technical Merit of each project will be determined using the procedures specified in paragraphs (g)(1)(iv)(A) and (B) of this section. The procedures specified in paragraph (g)(1)(iv)(A) will be used to score paragraphs (g)(1)(iv)(A)(*1*) through (*10*) of this section. The final score awarded will be calculated using the procedures described in paragraph (g)(1)(iv)(B) of this section.

(A) *Technical merit.* Paragraphs (g)(1)(iv)(A)(*1*) through (*10*) of this section have their own maximum possible score and will be scored according to the following criteria: If the description in the subparagraph has no significant weaknesses and exceeds the requirements of the subparagraph, 100 percent of the total possible score for the subparagraph will be awarded. If the description has one or more significant strengths and meets the requirements of the subparagraph, 80 percent of the total possible score will be awarded for the subparagraph. If the description meets the basic requirements of the subparagraph, but also has several weaknesses, 60 percent of the points will be awarded. If the description is lacking in one or more critical aspects, key issues have not been addressed, but the description demonstrates some merit or strengths, 40 percent of the total possible score will be awarded. If the description has serious deficiencies, internal inconsistencies, or is missing information, 20 percent of the total possible score will be awarded. If the description has no merit in this area, 0 percent of the total possible score will be awarded. The total possible points for Technical Merit is 30 points.

(*1*) *Qualifications of the project team (maximum score of 10 points).* The applicant has described the project team service providers, their professional credentials, and relevant experience. The description supports that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(*2*) *Agreements and permits (maximum score of 5 points).* The applicant has described the necessary agreements and permits required for the project and the schedule for securing those agreements and permits.

(*3*) *Energy or resource assessment (maximum score of 10 points).* The applicant has described the quality and availability of a suitable renewable resource or an assessment of expected energy savings for the proposed system.

(*4*) *Design and engineering (maximum score of 30 points).* The applicant has described the design, engineering, and testing needed for the proposed project. The description supports that the system will be designed, engineered, and tested so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(*5*) *Project development schedule (maximum score of 5 points).* The applicant has described the development method, including the key project development activities and the proposed schedule for each activity. The description identifies each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. The description addresses grantee or borrower project development cash flow requirements.

(*6*) *Project economic assessment (maximum score of 20 points).* The applicant has described the financial performance of the proposed project, including the calculation of simple payback. The description addresses project costs and revenues, such as applicable investment and production incentives, and other information to allow the assessment of the project's cost effectiveness.

(*7*) *Equipment procurement (maximum score of 5 points).* The applicant has described the availability of the equipment required by the system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule.

(*8*) *Equipment installation (maximum score of 5 points).* The applicant has described the plan for site development and system installation.

(*9*) *Operation and maintenance (maximum score of 5 points).* The applicant has described the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life.

(*10*) *Dismantling and disposal of project components (maximum score of 5 points).* The applicant has described the requirements for dismantling and disposing of project components at the end of their useful life and associated wastes.

(B) *Calculation of Technical Merit Score (maximum score of 30 points).* To determine the actual points awarded a project for Technical Merit, the following procedure will be used: The scores awarded for paragraphs (g)(1)(iv)(A)(*1*) through (*10*) of this section will be added together and then divided by 100, the maximum possible score, to achieve a percentage. This percentage will then be multiplied by the total possible points of 30 to achieve the points awarded for the proposed project for Technical Merit.

(v) *Readiness (maximum score of 10 points).* If the applicant has written commitments from the source(s) confirming commitment of 50 percent up to but not including 75 percent of the matching funds prior to the Agency receiving the complete application, 3 points will be awarded. If the applicant has written commitments from the source(s) confirming commitment of 75 percent up to but not including 100 percent of the matching funds prior to the Agency receiving the complete application, 6 points will be awarded. If the applicant has written commitments from the source(s) of matching funds confirming commitment of 100 percent of the matching funds prior to the Agency receiving the complete application, 10 points will be awarded.

(vi) *Small agricultural producer/very small business (maximum score of 8 points).* If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year, 4 points will be awarded. If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year or is a very small business, 8 points will be awarded.

(vii) *Simplified application/low cost project (maximum score of 3 points).* If the applicant is eligible for and uses the simplified application process or the project has total eligible project costs of $200,000 or less, 3 points will be awarded.

(viii) *Hybrid technology (maximum score of 3 points).* If the application is for a combination of two or more renewable energy technologies incorporated into a single project, 3 points will be awarded.

(ix) *Return on investment (maximum score of 6 points).* If the proposed project will return the cost of the investment in less than 4 years, 6 points will be awarded; 4 years up to but not including 8 years, 4 points will be awarded; or 8 years up to 11 years, 2 points will be awarded.

(x) *Financial need (maximum score of 5 points).* If the applicant can demonstrate either that the applicant is unable to finance the project from its own and commercially available resources without grant assistance or that the project proposed by the applicant cannot achieve the income and cash flows to sustain it financially over the long term without grant assistance, 5 points will be awarded.

(2) *Administrator priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section in the priority categories specified in paragraphs (g)(2)(i) through (v) of this section. No more than 10 Administrator points will be awarded to an application.

(i) Unserved or underserved areas;

(ii) Geographic diversity;

(iii) Emergency conditions;

(iv) Public health and safety; and

(v) Presidential initiatives.

(h) *Ranking applications.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after March 15 and July 15 each year.

§ 5002.103 Rural Cooperative Development Grants

The Rural Cooperative Development grant program is a Nationally-competed grant program with a specified application deadline.

(a) *Definition.* For the purpose of this section, *''Center''* is defined as the entity established or operated by the grantee for rural cooperative development. It may or may not be an independent legal entity separate from the grantee.

(b) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part, as appropriate, the applicant must be a non-profit organization or institution, including an accredited institution of higher education. Public bodies are not eligible to receive grants under this section.

(c) *Project eligibility.* In addition to the requirements specified in § 5002.22 in subpart A of this part, the project must be for the establishment and operation or the continuation of a rural cooperative development center (Center).

(1) Applications that focus on only one cooperative will not be considered for funding.

(2) Except for 1994 Institutions, applicants must provide 25 percent of total project cost.

(3) Applications for providing for the sharing of information among Centers will not be considered for funding if more than 10 percent of the funding request is for the provision of sharing of information among Centers.

(d) *Additional application requirements.* In addition to the application requirements specified in § 5002.32, all applications under this section must include a plan for the establishment and operation by the institution of a Center or Centers for cooperative development. This plan must contain the following elements:

(1) A provision that substantiates that the Center will effectively serve rural areas in the United States;

(2) A provision that the primary objective of the Center will be to improve the economic condition of rural areas through cooperative development;

(3) A description of the contributions that the proposed activities are likely to make to the improvement of the economic conditions of the rural areas for which the Center will provide services.

(4) Provisions that the Center, in carrying out the activities, will seek, where appropriate, the advice, participation, expertise, and assistance of representatives of business, industry, educational institutions, the Federal Government, and State and local governments.

(5) Provisions that the applicant will:

(i) Take all practicable steps to develop continuing sources of financial support for the Center, particularly from sources in the private sector;

(ii) Make arrangements for the activities by the non-profit operating the Center to be monitored and evaluated; and

(iii) Provide an accounting for the money received by the grantee under this section.

(e) *Eligible uses of grant funds.* Grant funds may be used for, but are not limited to, providing the following to individuals, cooperatives, small businesses and other similar entities in rural areas served by the Center:

(1) Applied research, feasibility, environmental and other studies that may be useful for the purpose of cooperative development.

(2) Collection, interpretation and dissemination of principles, facts, technical knowledge, or other information for the purpose of cooperative development.

(3) Providing training and instruction for the purpose of cooperative development.

(4) Providing loans and grants for the purpose of cooperative development in accordance with this section.

(5) Providing technical assistance, research services and advisory services for the purpose of cooperative development.

(6) Providing for the coordination or services and the sharing of information among Centers.

(f) *Ineligible uses.* Grant funds under this section will not be provided and cannot be used to:

(1) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond that which is currently being provided;

(2) pay costs of the project incurred prior to the date of grant approval;

(3) plan, repair, rehabilitate, acquire, or construct a building or facility, including a processing facility;

(4) purchase, rent, or install fixed equipment. Fixed equipment means nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of greater than or equal to $5,000.

(5) Pay for the repair of privately owned vehicles; or

(6) Fund research and development.

(g) *Grant agreement and conditions.* The length of grant agreements made under this section are subject to the conditions specified in paragraphs (g)(1) through (3) of this section.

(1) A grant awarded to a center that has received no prior funding under this section shall be made for a period of one year.

(2) If the Agency determines that it is in the best interest of the program, grants will be awarded for a period of more than one year, but not more than three years, to a center that has successfully met the parameters described in paragraphs (i)(1)(i) through (v) of this section, as determined by the Agency.

(3) The Agency will not approve requests to extend the grant period for more than 12 months.

(h) *Funding limitations and matching funds.*

(1) *Funding limitations.* For 1994 Institutions, the maximum amount of a grant awarded under this section will be no more than 95 percent of the total cost of the Center. The Agency shall not require a match of more than 5 percent of the total cost of the Center.

(2) *Matching funds.*

(i) Applicants must verify in their application that all matching funds are available for the time period of the grant.

(ii) Matching funds must be spent in advance of, or as a pro rata portion of, grant funds being expended.

(iii) All matching funds must be spent on eligible expenses and must be from eligible sources.

(iv) All matching funds must be provided by either the applicant or a third party in the form of cash or in-kind contributions.

(A) Matching funds contributed by the applicant may include a loan from another federal source. However, other Federal grant funds cannot be used as matching funds unless provided by other authorizing legislation.

(B) Any in-kind contributions must be performed for the benefit of the Center. The Center must be able to document and verify the number of hours worked and the value associated with the contribution. In-kind contributions provided by individuals, businesses, or cooperatives who are being assisted by the Center cannot be provided for the benefit of their own projects because the Agency considers this a conflict of interest or the appearance of a conflict of interest.

(i) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (i)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (i)(1)(i) through (viii) of this section.

(i) *Administrative capabilities (maximum score of 10 points).* The Agency will evaluate the application to determine whether the applicant has a proven track record of carrying out activities to promote and assist the development of cooperatively and mutually owned businesses. The applicant must also discuss their financial systems and audit controls, personnel and program administration performance measures and rules of governance. Applicants that evidence capable systems and controls and clear rules of governance will receive more points.

(ii) *Technical assistance and other services (maximum score of 15 points).* The Agency will evaluate the applicant's demonstrated expertise in providing technical assistance and accomplishing effective outcomes in cooperative development in rural areas to promote and assist the development of cooperatively and mutually owned businesses. The applicant should also discuss their potential for delivering effective technical assistance, the expected effects of that assistance, and the sustainability of organizations receiving the assistance. Applicants that evidence effective delivery systems for cooperative development will receive more points.

(iii) *Economic development (maximum score of 15 points).* The Agency will evaluate the applicant's demonstrated ability to assist in the retention of businesses, facilitate the establishment of cooperatives and new cooperative approaches and generate employment opportunities that will improve the economic conditions of rural areas. Applicants that provide statistics and identify their role in the economic development outcomes will receive more points.

(iv) *Networking and regional focus (maximum score of 10 points).* The Agency will evaluate the applicant's demonstrated commitment to:

(A) networking with and sharing the results of the efforts of the center with other cooperative development centers and other organizations involved in rural economic development efforts (maximum score of 5 points); and

(B) developing multiorganization and multistate approaches to addressing the economic development and cooperative needs of rural areas (maximum score of 5 points).

(v) *Commitment (maximum score of 10 points).* The Agency will evaluate the applicant's commitment to providing technical assistance and other services to underserved and economically distressed areas in rural areas of the United States. Applicants that provide statistics and tie their service area and projects to the underserved and the economically distressed areas as appropriate will receive more points.

(vi) *Qualifications of those performing the tasks (maximum score of 10 points).* The Agency will evaluate the application to determine if the personnel expected to perform key Center tasks have a track record of positive solutions for complex cooperative development and/or marketing problems, or a successful record of conducting accurate feasibility studies, business plans, marketing analysis, or other activities relevant to cooperative development Center success as determined by the tasks identified in applicant's work plan. Applicants that evidence commitment/availability of qualified personnel expected to perform the tasks will receive more points.

(vii) *Local support (maximum score of 10 points).* The Agency will evaluate the applications for previous and expected local support for the Center and plans for coordinating with other developmental organizations (including state and local institutions) in the proposed service area. Applicants that evidence strong support from potential beneficiaries and formal evidence of intent to coordinate with other developmental organizations will receive more points.

(viii) *Future support (maximum score of 10 points).* The Agency will evaluate the applicant's vision for funding Center operations for future years. Discussion should include issues such as sources and uses of alternative funding; reliance on Federal, State, and local grants; and the use of in-house personnel for providing services versus contracting out for that expertise. Applicants that evidence vision of long-term sustainability with diversification of funding sources and building in-house technical assistance capacity will receive more points.

(2) *Administrator priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section to improve the geographic diversity of awardees in a fiscal year.

(j) *Ranking applications.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after July 15 each year.

(k) *Additional criteria for selecting applications for funding.* If two projects obtain the same total score, the Agency will select the project whose aggregate score for the criteria specified in paragraphs (i)(1)(i) through (v) of this section is higher.

§ 5002.104 Distance Learning and Telemedicine Grants.

The Distance Learning and Telemedicine (DLT) grant program is a Nationally-competed grant program with a specified application deadline.

(a) *Definition.* For the purpose of this section, ''*Telecommunications or electric borrower'' is defined as an* entity that has outstanding RUS or Rural Telephone Bank electric or telecommunications loans or loan guarantees under the provisions of the Rural Electrification Act of 1936.

(b) *Applicant eligibility.* In addition to the requirements specified in § 5002.20, except for § 5002.20(c), in subpart A of this part:

(1) The applicant must be:

(i) Legally organized as an incorporated organization or partnership;

(ii) An Indian tribe or tribal organization, as defined in 25 U.S.C. 450b (b) and (c);

(iii) A state or local unit of government or a consortium; or

(iv) Other legal entity, including a private corporation organized on a profit or non-profit basis.

(v) If the applicant is a consortium, at least one member of the consortium must meet the requirements of paragraphs (b)(1)(i) through (iv) of this section. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency in its own behalf.

(2) Each applicant must provide written evidence of its legal capacity to contract with the Agency to obtain the grant, and comply with all applicable requirements. If a consortium lacks the legal capacity to contract, each individual entity must contract with the Agency on its own behalf.

(3) Individuals are not eligible for program financial assistance under this program directly.

(4) Telecommunications or electric borrowers under the Rural Electrification Act of 1936 ((7 U.S.C. 950aaa et seq.) are not eligible for grants, provided, however, that such borrowers are eligible for funding under the Distance Learning Telemedicine Combination Loan and Grant Program (7 CFR 1703, subpart D) and the Distance Learning Telemedicine Loan Program (7 CFR 1703, subpart G).

(c) *Project eligibility.* In addition to the requirements specified in § 5002.22 in subpart A of this part:

(1) The project must be to deliver distance learning or telemedicine services to entities that operate a rural community facility, including libraries, or to residents of rural areas at rates calculated to ensure that the benefit of the financial assistance is passed through to such entities or to residents of rural areas; and

(2) DLT end-user sites must be located in a rural area described in one of the four rural areas described in paragraph (h)(1)(ii)(A) of this section, although the DLT hub site may be located in either a rural or non-rural area. DLT end-user facilities not within one of these four defined rural areas are not eligible for grant funding under this section.

(d) *Additional preapplication and application requirements.* In addition to, or in lieu of, as applicable, the requirements specified in §§ 5002.30, 5002.31, and 5002.32, the following requirements apply to preapplications and applications submitted under this section.

(1) *Preapplications.* If an applicant elects to submit a preapplication, the preapplication must be received by the Agency on or before January 1 of the year in which a related application is received. Preapplications received after January 1 will not be considered by the Agency.

(2) *Applications*—(i) *Application submittal.* When submitting applications, the applicant shall submit one original and two copies of the application to the Agency.

(ii) *Application deadline.* Applications must be received on or before March 31 of each year to be considered for funding for that fiscal year. Applications received by the Agency after March 31 will not be considered for funding that fiscal year.

(iii) *State strategic plan.* The application must contain evidence from the Agency State Director, Rural Development, that the application conforms with the State strategic plan as prepared under section 381D of the

Consolidated Farm and Rural Development Act (7 U.S.C. 1921). The applicant should indicate if such a plan does not exist.

(e) *Eligible uses of grant funds*. Grant funds under this section must be used to fund only the costs for approved purposes as defined in paragraphs (e)(1) through (5) of this section. Grants shall be expended only for the costs associated with the initial capital assets associated with the project.

(1) Acquiring, by lease or purchase, constructing, or installing eligible equipment, which is computer hardware and software, audio or video equipment, computer network components, telecommunications terminal equipment, data terminal equipment, inside wiring, interactive video equipment, or similar equipment, or other facilities that would further telemedicine services or distance learning services.

(2) Acquiring or installing instructional programming.

(3) Providing technical assistance and instruction for using eligible equipment, including any related software.

(4) Developing instructional programming.

(5) Providing engineering or environmental studies relating to the establishment or expansion of the phase of the project that is being funded with the grant.

(f) *Ineligible uses of grant funds*. Grant funds under this section will not be provided and cannot be used:

(1) To cover the costs of acquiring, installing or constructing telecommunications transmission facilities;

(2) To pay for medical equipment not having telemedicine as its essential function;

(3) To pay salaries, wages, or employee benefits to medical or educational personnel;

(4) To pay for the salaries or administrative expenses of the applicant or the project;

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider unless that service provider is the applicant;

(6) To duplicate facilities providing distance learning or telemedicine services in place or to reimburse the applicant or others for costs incurred prior to the Agency's receipt of the completed application;

(7) To pay costs of preparing the application package for financial assistance under this program;

(8) For projects whose primary objective is to provide links between teachers and students or between medical professionals who are located at the same facility;

(9) For site development and the destruction or alteration of buildings;

(10) For the purchase of land, buildings, or building construction;

(11) For any purpose that the Administrator has not specifically approved; or

(12) Except for leases provided for in paragraph (e)(1) of this section, to pay the cost of recurring or operating expenses for the project.

(g) *Funding considerations and matching funds*—(1) *Limitation on funding certain purposes*. No more than 10 percent of the funds for a grant under this section can be used for any one of the purposes listed in paragraphs (e)(3) through (5) of this section, or for any combination thereof.

(2) *Matching funds*. The grant applicant's minimum matching contribution must equal 15 percent of the grant amount requested and shall be used for approved purposes for grant funds listed in paragraph (e) of this section.

(i) Matching contributions generally must be in the form of cash. However, in-kind contributions solely for the purposes listed in paragraph (e) of this section may be substituted for cash.

(ii) In-kind items listed in paragraph (e) of this section must be non-depreciated, new assets with established monetary values. Manufacturers', vendors', or service providers' discounts are not considered in-kind matching.

(iii) Costs incurred by the applicant, or others on behalf of the applicant, for facilities or equipment installed, or other services rendered prior to submission of a completed application, shall not be considered as an eligible in-kind matching contribution.

(iv) Costs incurred for non-approved purposes identified in paragraph (f) of this section shall not be used as an in-kind matching contribution.

(v) Any financial assistance from Federal sources will not be considered as matching contributions under this section unless there is a Federal statutory exception specifically authorizing the Federal financial assistance to be considered as a matching contribution, and that exception is documented in the application.

(h) *Scoring applications*. Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (h)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points*. The Agency will award program-specific points for the priority categories described in paragraphs (h)(1)(i) through (iii) of this section.

(i) *The critical need for the project (maximum score of 35 points)*. (A) This criterion will be used to score applications based on the documentation in support of the need for services, the benefits derived from the services proposed by the project, the local community involvement in planning and implementing the project, the local participation in financing the project, the financial need of the applicant, and the technical and functional quality of the project. Technical and functional quality is determined in part by the utilization of existing or non-project telecommunications resources in an area, the integration of the project into other networks, and the ability of the project to serve the greatest practical number of residents in the project's area. This determination will be made by the Agency based on information submitted by the applicant under paragraph (d)(2) of this section.

(B) The Agency will consider the extent of the applicant's documentation explaining the economic, education, or health care challenges facing the community; the applicant's proposed plan to address these challenges; how the grant can help; and why the applicant cannot complete the project without a grant. The Agency will also consider the extent to which the applicant provides evidence that economic, education, or health care challenges could not be addressed without employing the specific technology proposed. The Agency will also consider any support by recognized experts in the related educational or health care field, any documentation substantiating the educational or health care underserved nature of the applicant's proposed service area, and any justification for specific educational or medical services that are needed and will provide direct benefits to rural residents. The Agency will consider the extent to which the applicant demonstrates that the project most efficiently provides the needed services. The Agency will also consider evidence of local support of the project, including demonstrations of local (applicant and community) financial contributions for eligible and ineligible grant purposes, planning and administrative support for the project, and support from community and institutional leaders. When an applicant believes a project area's or beneficiaries' financial need is

greater than the need expressed by the project's National School Lunch Program (NSLP) eligibility score, the Agency will consider evidence of this unusual need.

(ii) *The comparative population sparsity of the service area (maximum score of 30 points).* This criterion will be used to evaluate the relative rurality of service areas for various projects. Under this system, the DLT end-user sites contained within the service area are identified and given a score according to the population of the area where the DLT end-user sites are located.

(A) The following definitions are used in the evaluation of sparsity:

(*1*) Most Rural Area means any area of the United States not included within the boundaries of any Census-defined urban cluster or urbanized area having a population of 2,500 or more inhabitants.

(*2*) Extremely Rural Area means any area of the United States not included within the boundaries of any Census-defined urbanized area but which is included in an urban cluster of from 2,501 to 5,000 inhabitants.

(*3*) Mid-Rural Area means any area of the United States not included within the boundaries of any Census-defined urbanized area but which is included within the boundaries of an urban cluster having a population of from 5,001 to 10,000 inhabitants.

(*4*) Rural Area means any area of the United States not included within the boundaries of any Census-defined urbanized area but which is included in an urban cluster of from 10,001 to 20,000 inhabitants.

(B) There are a total of 30 possible points for this criterion. Each end-user site will receive points based on its location in accordance with paragraphs (h)(1)(ii)(B)(*1*) through (*4*) of this section. If a hub is utilized as an end-user site, the hub will be considered as an end-user site. The applicant will receive points as follows:

(*1*) If the end-user site is located in a Most Rural Area, it will receive 30 points.

(*2*) If the end-user site is located in an Extremely Rural Area, it will receive 25 points.

(*3*) If the end-user site is located in a Mid-Rural Area, it will receive 15 points.

(*4*) If the end-user site is located in a Rural Area, it will receive 0 points.

(C) The total score for this criterion will be based on the average score for all the end-user sites included in the project.

(iii) *The economic need of the applicant's service area as estimated by the NSLP (maximum score of 25 points).* This criterion will be used to evaluate the relative financial need of the applicant, community, and project. All applicants are required to provide the applicable percentage of students eligible to participate in the NSLP for each area to be served by the end-user site. The appropriate State or local organization administering the program must certify the percentages as being correct. The applicant must provide a listing of the location of each end-user site (city, town, village, borough or rural area) discussing how the appropriate NSLP percentage was determined in accordance with this section. These percentages may be obtained from the State or local organization that administers the program and must be certified by that organization as being correct by such entity. For purposes of this section, the NSLP percentage will reflect the percentage of eligibility rather than the percentage of actual participation.

(A) The following guidelines will be used to determine the applicable NSLP percent for a particular application:

(*1*) The eligibility percentage for each end-user site is the eligibility percentage of the school district where the end-user will be located.

(*2*) Percentage ratios will be rounded up to the next highest or rounded down to the next lowest whole number for fraction of percentages at or greater than 0.5 or less than 0.5, respectively.

(*3*) The project NSLP percentage will be determined by the average of the NSLP percentages of the end-user sites. If end-user sites fall within different percentile categories, the eligibility percentages associated with each end-user site will be averaged to determine the percentile category. For purposes of averaging, if a hub is also utilized as an end-user site, the hub will be considered as an end-user site.

(B) The applicant will receive economic need points based on the project NSLP percentage, as follows:

(*1*) NSLP percentage greater than or equal to 74 percent receives 25 points.

(*2*) NSLP percentage less than 25 percent receives zero points.

(*3*) One point is scored for each two percentage point increase in project NSLP percentage. For example, if the project NSLP percentage is 25 percent or 26 percent, the economic need score is 1 point. If the project NSLP percentage is 47 percent or 48 percent, the economic need score is 12 points.

(2) *Administrator priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section to improve the geographic diversity of awardees in a fiscal year.

(i) *Ranking applications.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after July 15 each year.

§ 5002.105 Value-Added Producer Grants.

The Value-Added Producer grant program is a Nationally-competed grant program with a specified application deadline. For the purposes of the application of the requirements in subpart A, in the case of this section the term ''venture'' means ''project'' as that term is used in subpart A and includes the project and any other activities related to the production, processing, and marketing of the value-added product that is the subject of the value-added producer grant request.

(a) *Definitions.*

Agricultural producer. Persons or entities, including farmers, ranchers, loggers, agricultural harvesters, and fishermen, that engage in the production or harvesting of an agricultural product. Producers may or may not own the land or other production resources, but must have majority ownership interest in the agricultural product to which value-added is to accrue as a result of the venture. Examples of agricultural producers include: a logger who has a majority interest in the logs harvested that are then converted to boards, a fisherman that has a majority interest in the fish caught that are then smoked, a wild herb gatherer that has a majority interest in the gathered herbs that are then converted into essential oils, a cattle feeder that has a majority interest in the cattle that are fed, slaughtered and sold as boxed beef, and a corn grower that has a majority interest in the corn produced that is then converted into corn meal.

Beginning farmer or rancher. The term ''beginning farmer or rancher'' has the meaning given the term in section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).

Family farm. The term ''family farm'' has the meaning given the term in section 761.2 of title 7, Code of Federal Regulations (as in effect on December 30, 2007).

Special purpose equipment. Equipment that is used only for research, medical, scientific, or other technical activities.

Socially disadvantaged farmer or rancher. The term ''socially disadvantaged farmer or rancher'' has the meaning given the term in section 355(e) of the Consolidated Farm and

Rural Development Act (7 U.S.C. 2003(e)).

(b) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part:

(1) The applicant must be:

(i) An independent producer;

(ii) Agricultural producer group;

(iii) Farmer or rancher cooperative; or

(iv) A majority-controlled producer-based business venture.

(2) An applicant that is a farmer or rancher cooperative, an agriculture producer group, or a majority-controlled producer-based business venture must be entering into an emerging market as a result of the proposed venture.

(3) An applicant that is an independent producer does not have to be entering into an emerging market.

(c) *Venture eligibility.* In order for a venture to be eligible for grant funding under this section, the venture must evidence a high likelihood of creating value-added for an agricultural product by meeting at least one of the categories in the definition of value-added. The project eligibility requirements specified in § 5002.22 in subpart A of this part do not apply to ventures seeking a grant under this section.

(1) The venture must be located in a rural area.

(2) Working capital grants must have a feasibility study and business plan completed specifically for the proposed venture before the application is submitted. The feasibility study and business plan must be submitted when requested by the Agency during application processing.

(3) Applicants who have already received a planning grant for the proposed venture cannot receive another planning grant for the same venture. Applicants who have already received a working capital grant for a venture cannot receive any additional grants for that venture.

(4) No venture may be the subject of more than one planning grant or more than one working capital grant under this section. The same venture may, however, be awarded one planning grant and subsequently apply for and receive a working capital grant.

(5) Not more than one venture per funding cycle per applicant may receive grant funding under this section.

(6) If the agricultural product is a value-added product, agricultural producers must have a majority ownership interest in the agricultural product to which value-added is to accrue.

(d) *Eligible uses of grant funds.* Grant funds under this section must be used to fund only the costs for approved purposes as defined in paragraphs (d)(1) and (2) of this section.

(1) Planning grant funds may be used to develop a business plan or perform a feasibility study to establish a viable marketing opportunity for a value-added producer. These uses include, but are not limited to, the following:

(i) Conduct, or hire a qualified consultant to conduct, a feasibility analysis of the proposed value added venture to help determine the potential success of the venture;

(ii) Develop, or hire a qualified consultant to develop, a business operations plan that provides comprehensive detail on the management, planning and other operational aspects of the proposed venture;

(iii) Develop, or hire a qualified consultant to develop, a marketing plan for the proposed value-added product(s) including the identification of a market window, potential buyers, a description of the distribution system and possible promotional campaigns; and

(iv) Hire counsel to provide legal advice and to draft organizational and other legal documents related to the proposed venture.

(2) Working capital grant funds may be used to provide capital to establish alliances or business ventures that allow the producer of the value-added agricultural product to better compete in domestic or international markets. These uses include, but are not limited to, the following:

(i) Establish a working capital account to fund operations prior to obtaining sufficient cash flow from operations;

(ii) Hire counsel to provide legal advice and to draft legal documents related to the proposed venture;

(iii) Hire a certified public accountant or other qualified individual to design an accounting system for the proposed venture; and

(iv) Pay salaries, utilities and other operating costs such as inventory financing, the purchase of office equipment, computers and supplies and finance other related activities.

(v) Conduct a marketing campaign for a proposed value-added product.

(e) *Ineligible uses of grant funds.* Grant funds under this section may not be used to:

(1) Duplicate current services or replace or substitute support previously provided. If the current service is inadequate, however, grant funds may be used to expand the level of effort or services beyond what is currently being provided;

(2) Pay costs of the venture incurred prior to the date of grant approval;

(3) Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

(4) Purchase, rent, or install fixed equipment. Fixed equipment means nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost of greater than or equal to $5,000. Rental or purchase of special purpose equipment for specific, limited applications related to planning grants may be approved at the discretion of the Agency;

(5) Pay for the repair of privately owned vehicles;

(6) Fund research and development;

(7) Purchase real property and/or vehicles, including boats;

(8) Pay expenses not directly related to the funded venture;

(9) Fund architectural or engineering design work for a specific physical facility;

(10) Fund any expenses related to the production of any commodity or product to which value will be added, including seed, rootstock, labor for harvesting the crop, and delivery of the commodity to a processing facility. The Agency considers these expenses to be ineligible because the intent of the program is to assist producers with marketing value-added products rather than producing agricultural commodities; or

(11) Conduct activities on behalf of anyone other than a specific independent producer or group of independent producers. The Agency considers conducting industry-level feasibility studies and business plans that are also known as feasibility study templates or guides or business plan templates or guides to be ineligible because the assistance is not provided to a specific group of independent producers.

(f) *Additional preapplication and application requirements.* In addition to the requirements specified in §§ 5002.30, 5002.31, and 5002.32, the following requirements apply to preapplications and applications submitted under this section.

(1) *Preapplications.* If an applicant elects to submit a preapplication, the preapplication must be received by the Agency on or before January 15 of each year to be considered. Preapplications received after January 15 will not be considered by the Agency.

(2) *Applications*—(i) *Deadline.* Unless otherwise specified in a notification issued under § 5002.15, applications must be received on or before March 1 of each year to be considered for funding for that fiscal year. Applications received by the Agency after March 1 will not be considered.

(ii) *Business plan.* The business plan must include at least three years of pro forma financial statements.

(iii) *Feasibility study.* The feasibility study should show how the venture would operate under a set of assumptions, the technology used (the facilities, equipment, production process, etc.), the qualifications of the management team, and the financial aspects (capital needs, volume, cost of goods, wages, etc.) of the venture. The analysis should answer the following questions about the venture.

(A) Where is it now?

(B) Where does the group want to go?

(C) Why does the group want to go forward with the venture?

(D) How will the group accomplish the venture?

(E) What resources are needed?

(F) Who will provide assistance?

(G) When will the venture be completed?

(H) How much will the venture cost?

(I) What are the risks?

(3) *Simplified application.* Applicants with ventures requesting less than $50,000 will be allowed to submit an application under this section that has less documentation than for applicants with ventures requesting $50,000 or more. The requirements for simplified applications are available at any Rural Development office and on the Agency Web site.

(g) *Grant agreement and conditions.* The length of grant agreements made under this section shall not exceed three years.

(h) *Funding limitations and matching funds*—(1) *Funding Limitations.* (i) Grant funds may be used to pay up to 50 percent of the costs for carrying out relevant ventures.

(ii) The aggregate amount of awards to majority controlled producer-based business ventures may not exceed ten percent of the total funds obligated under this program during any fiscal year.

(iii) The total amount provided to a grantee in any one year shall not exceed $500,000.

(2) *Matching funds.* (i) Applicants must verify in their applications that matching funds are available for the time period of the grant.

(ii) Matching funds must be at least equal to the amount of grant funds requested.

(iii) Unless provided by other authorizing legislation, other Federal grant funds cannot be used as matching funds.

(iv) Matching funds must be spent at a rate equal to or greater than the rate at which grant funds are expended.

(v) Matching funds must be provided by either the applicant or by a third party in the form of cash or in-kind contributions.

(vi) Matching funds must be spent on eligible expenses and must be from eligible sources.

(i) *Scoring applications.* Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (i)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points.* The Agency will award program-specific points for the priority categories described in paragraphs (i)(1)(i) through (v) of this section, as applicable.

(i) *Nature of the proposed venture (maximum score of 25 points).* Ventures will be evaluated for technological feasibility, operational efficiency, profitability, sustainability and the likely improvement to the local rural economy. Also considered will be the potential for expanding the customer base for the Value-Added product and the expected increase in returns to the producer-owners of the venture.

(ii) *Personnel qualifications (maximum score of 20 points).* Ventures will be evaluated for whether the personnel who are responsible for completing the proposed tasks, including those leading or managing the venture and those leading the venture, have the necessary qualifications.

(iii) *Commitments and support (maximum score of 20 points).* Commitment to the venture will be evaluated on the basis of the number of independent producers currently involved as well as how many may potentially be involved, and the nature, level, and quality of their contributions. End-user commitments will be evaluated on the basis of potential markets and the potential amount of output to be purchased. Applications will also be reviewed for evidence that the venture has significant third party support, with financial support being most important, followed by in-kind support and finally general support.

(iv) *Work plan/budget (maximum score of 20 points).* The work plan will be evaluated based on whether it provides specific and detailed task descriptions, reasonable and specific timeframes for the tasks, and the key personnel responsible for the tasks that will accomplish the venture's goals. The budget will be evaluated based on whether it provides a detailed breakdown of all estimated costs (both grant and matching) associated with the proposed activities, allocates these costs among the listed tasks, and is reasonable.

(v) *Type of applicant (maximum score of 5 points).* If an application is from an applicant that is a beginning farmer or rancher, a socially disadvantaged farmer or rancher, or an operator of a small- or medium-sized farm or ranch that is structured as a family farm, 3 points will be awarded. If the application is from an applicant that meets any two of these three applicant types, 4 points will be awarded. If the application is from an applicant that meets all three applicant types, 5 points will be awarded.

(2) *Administrator priority categories and points.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section to improve the geographic diversity of awardees in a fiscal year.

(j) *Ranking applications.* Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after July 15 each year.

§ 5002.106 Water and Waste Disposal Facilities Grants.

The Water and Waste Disposal Facilities grant program is a State-allocated grant program with an open application period.

(a) *General.* Water and waste applicants must demonstrate that they possess the financial, technical, and managerial capability necessary to consistently comply with pertinent Federal and State laws and requirements. In developing water and waste systems, applicants must consider alternatives of ownership, system design, and the sharing of services.

(b) *Applicant eligibility.* In addition to the requirements specified in § 5002.20 in subpart A of this part, as appropriate, an applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision of a State, territory or commonwealth;

(2) An organization operated on a non-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community; or

(3) An Indian tribe on Federal and State reservations and other Federally-recognized Indian tribe.

(c) *Project eligibility.* In addition to the requirements specified in § 5002.22

in subpart A of this part, the project must meet the following requirements:

(1) *Rural area.* The project must serve a rural area that, if such project is completed, is not likely to decline in population below that for which the project was designed. Facilities funded by the Agency may be located in non-rural areas. However, loan and grant funds may be used to fund only that portion of the facility serving rural areas, regardless of facility location.

(2) *Capacity.* The project must be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable.

(3) *Community development and plan.* The project must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area.

(4) *Revenue sources.* All projects funded under the provisions of this section must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

(5) *Public use.* All facilities funded under the provisions of this section shall be for public use. The facilities will be installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served.

(i) This does not preclude:

(A) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(B) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to or parts thereof. Additionally, the applicant must publicly announce a plan for extending service to areas not initially receiving service. Additionally, the applicant must provide written notice to potential users located in the areas not to be initially served.

(ii) Should the Agency determine that inequities exist within the applicant's service area for the same type service proposed (i.e., water or waste disposal) such inequities will be remedied by the applicant prior to grant approval or included as part of the project. Inequities are defined as unjustified variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different funding, rates, terms or conditions do not necessarily constitute inequities.

(iii) Developers are expected to provide utility-type facilities in new or developing areas in compliance with appropriate State statutes.

(6) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources or through commercial credit at reasonable rates and terms.

(d) *Notice of intent to apply for grant.* An applicant must publish a notice of intent to apply for a grant under this program not more than 60 days before filing the application with the Agency. The notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

(e) *Eligible uses of grant funds.* Grant funds under this section may be used only for the following purposes:

(1) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities.

(2) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (e)(1) of this section.

(3) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (e)(1) of this section.

(4) For payment of other utility connection charges as provided in service contracts between utility systems.

(5) When a necessary part of the project relates to those facilities authorized in paragraphs (e)(1) through (4), grant funds may be used for:

(i) Reasonable fees and costs such as legal, engineering, architectural, accounting, environmental, archeological, and appraisal;

(ii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(iii) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities;

(iv) Cost of additional applicant labor and other expenses necessary to install and extend service; and

(v) In unusual cases, the cost for connecting the user to the main service line.

(vi) To restore loan funds used to prepay grant obligated costs.

(6) Construction incurred before grant approval.

(i) Funds may be used to pay obligations for eligible project costs incurred before grant approval if such requests are made in writing by the applicant and the Agency determines that:

(A) Compelling reasons exist for incurring obligations before grant approval;

(B) The obligations will be incurred for authorized grant purposes; and

(C) The Agency's authorization to pay such obligations is on the condition that it is not committed to make the grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all grant approval requirements, including environmental and contracting requirements.

(ii) If construction is started without Agency approval, post-approval in accordance with this section may be considered, provided the construction meets applicable requirements including those regarding approval and environmental matters.

(f) *Ineligible uses of grant funds.* Grant funds under this section may not be used to fund:

(1) Facilities that are not modest in size, design, and cost;

(2) Loan or grant finder's fees;

(3) The construction of any new combined storm and sanitary sewer facilities;

(4) Any portion of the cost of a facility that does not serve a rural area;

(5) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment, etc.;

(6) For other purposes not directly related to operating and maintenance of the facility being installed or improved;

(7) Reduce equivalent dwelling unit (EDU) costs to a level less than similar system cost;

(8) Pay any costs of a project when the median household income of the service area is more than 100 percent of the nonmetropolitan median household income of the State;

(9) Pay project costs when other loan funding for the project is not at reasonable rates and terms; or

(10) Pay project costs when other funding is a guaranteed loan obtained in accordance with the guaranteed loan program for water and waste disposal facilities.

(g) *Funding considerations and matching funds*—(1) *Funding considerations*. Grants will be determined by the Agency in accordance with the provisions of this paragraph.

(i) *Similar system cost*. If the grant results in an annual EDU cost that is not comparable with similar systems, the Agency will determine a grant amount based on achieving EDU costs that are not below similar system user costs.

(ii) *Wholesale service*. When an applicant provides wholesale sales or services on a contract basis to another system or entity, similar wholesale system cost will be used in determining the amount of grant needed to achieve a reasonable wholesale user cost.

(iii) *Subsidized cost*. When annual cost to the applicant for delivery of service is subsidized by the state, commonwealth, or territory, and uniform flat user charges regardless of usage are imposed for similar classes of service throughout the service area, the Agency may proceed with a grant in an amount necessary to reduce such delivery cost to a reasonable level.

(2) *Matching funds*. Grants may not be made in excess of the percentages specified in paragraphs (g)(2)(i) and (ii) of this section. These percentages are based on Agency eligible project development costs. Facilities previously installed will not be considered in determining the development costs. Applicants are advised that the percentages contained in paragraphs (g)(2)(i) and (ii) of this section are maximum amounts and may be further limited due to availability of funds or the grant determination procedures contained in paragraph (g)(1) of this section.

(i) When the median household income of the service area is below the higher of the poverty line or 80 percent of the state nonmetropolitan median income and the project is necessary to alleviate a public health and safety or security problem, the maximum amount of the grant will not exceed 75 percent of Agency eligible project development costs.

(ii) When the median household income of the service area exceeds the 80 percent, but is not more than 100 percent of the statewide nonmetropolitan median household income, the maximum amount of the grant will not exceed 45 percent of Agency eligible project development costs.

(h) *Scoring applications*. Each application for a grant under this section will be scored based on the priority categories and points specified in paragraphs (h)(1) and (2) of this section. The maximum number of points that will be awarded to an application is 100.

(1) *Program-specific priority categories and points*. The Agency will award program-specific points for the priority categories described in paragraphs (h)(1)(i) through (iv) of this section.

(i) *Population priorities (maximum score of 10 points)*.

(A) 10 points will be awarded if the proposed project will primarily serve a rural area having a population not in excess of 1,000;

(B) 7 points will be awarded if the proposed project primarily serves a rural area having a population between 1,001 and 2,500;

(C) 2 points will be awarded if the proposed project primarily serves a rural area having a population between 2,501 and 5,500.

(ii) *Health priorities (maximum score of 30 points)*. (A) 12 points will be awarded if the proposed project is needed to alleviate an emergency situation, correct unanticipated diminution or deterioration of a water supply, or to meet Safe Drinking Water Act requirements that pertain to a water system;

(B) 12 points will be awarded if the proposed project is required to correct inadequacies of a wastewater disposal system, or to meet health standards that pertain to a wastewater disposal system;

(C) 6 points will be awarded if the proposed project is required to meet administrative orders issued to correct local, State, or Federal solid waste violations.

(iii) *Median household income priorities (maximum score of 10 points)*. If the median household income of the population to be served by the proposed project is:

(A) Less than the poverty line if the poverty line is less than 80 percent of the statewide non-metropolitan median household income, 10 points will be awarded;

(B) Less than 80 percent of the statewide non-metropolitan median household income, 8 points will be awarded;

(C) Equal to or more than the poverty line and between 80 percent and 100 percent, inclusive, of the statewide non-metropolitan median household income, 6 points will be awarded.

(iv) *Other priorities (maximum score of 30 points)*. (A) 7 points will be awarded if the proposed project will merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service;

(B) 5 points will be awarded if the proposed project will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural areas;

(C) 2 points will be awarded if the applicant is a public body or Indian tribe;

(D) If the amount of other than Agency funds committed to the proposed project is:

(*1*) 50 percent or more, 6 points will be awarded;

(*2*) 20 percent to 49 percent, 4 points will be awarded;

(*3*) 5 percent to 19 percent, 2 points will awarded;

(E) 4 points will be awarded if the proposed project will serve Agency identified target areas;

(F) 2 points will be awarded if the proposed project primarily will recycle solid waste products thereby limiting the need for solid waste disposal;

(G) 4 points will be awarded if the proposed project will serve an area that has an unreliable quality or supply of drinking water.

(2) *Administrator priority categories and points*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Administrator may award up to 10 points to an application under this section for grant size and to improve the geographic diversity of awardees in a fiscal year. No more than 10 Administrator points will be awarded to an application.

(3) *State director priority categories and points*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, a State Director may award up to 10 points to an application that meets any of the State Director priority categories specified in § 5002.42(b)(2)(i) through (x) and paragraphs (h)(3)(i) and (ii) of this section. No more than a total of 10 State Director points may be awarded under this paragraph to an application.

(i) Arsenic (as specified in a memorandum of understanding with the U.S. Environmental Protection Agency).

(ii) Areas located within 100 miles of New York City's ''ground zero'' as the result of the September 11, 2001, attacks.

(i) *Ranking applications*. Unless otherwise specified in a notification issued under § 5002.15 of subpart A of this part, the Agency will rank applications on or after the following dates each fiscal year: December 15, March 15, July 15, and August 15.

(j) *Additional criteria for selecting applications for funding.* The Agency may select the next highest scoring application for funding before a higher scoring application when the application is a subsequent request for a previously approved project. If the request is due to cost overruns, the cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding, or other means. Cost overruns exceeding 20 percent of the development cost at time of grant approval or where the scope of the original purpose has changed will not be considered in selecting the next highest scoring application over the higher scoring application.

(k) *User charges.* The user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. The planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and, if appropriate, additional revenue for facility replacement of short-lived assets without building a substantial surplus.

(l) *Professional services and contracts related to the facility.* Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when Agency funding is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, environmental review and documentation requirements (in accordance with the environmental policies and procedures of the Rural Utilities Service), preparation of cost and income estimates, development of proposals for organization and funding, and overall operation and maintenance of the facility. Applicants should negotiate for procurement of professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to Agency concurrence.

(1) *Engineering and architectural services.* (i) Applicants shall publicly announce all requirements for engineering and architectural services, and negotiate contracts for engineering and architectural services on the basis of demonstrated competence and qualifications for the type of professional services required and at a fair and reasonable price.

(ii) When project design services are procured separately, the selection of the engineer or architect shall be done by requesting qualification-based proposals and in accordance with this section.

(iii) Applicants may procure engineering and architectural services in accordance with applicable State statutes or local requirements provided the State Director determines that such procurement meets the intent of this section.

(2) *Other professional services.* Professional services of the following may be necessary: Attorney, bond counsel, accountant, auditor, appraiser, and environmental professionals (if desired by applicant).

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to the Agency for review and concurrence.

(m) *User estimates.* Applicants dependent on users' fees for operation and maintenance expenses shall base their income and expense forecast on realistic user estimates. For users presently not receiving service, consideration must be given to the following:

(1) An estimated number of maximum users should not be used when setting user fees and rates since it may be several years before all residents will need service by the system. In establishing rates, a realistic number of users should be employed.

(2) The amount of cash contributions required will be set by the applicant and concurred in by the Agency. A new user cash contribution is not required when:

(i) The Agency determines that the potential users as a whole in the applicant's service area cannot make cash contributions; or

(ii) State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(n) *Water rights.* The following will be furnished as applicable:

(1) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(2) A copy of a contract with another company or municipality to supply water; or stock certificates in another company that represents the right to receive water.

§ 5002.107 Economic Impact Initiatives Grants.

(a) The Economic Impact Initiatives grant program is a State-allocated grant program with an open application period.

(b) The Economic Impact Initiatives grant program will be implemented according the requirements of subpart A and the requirements of § 5002.101, except that the essential community facility must be located in a rural community where the ''not employed rate'' is greater than the percentage established under section 306(a)(2) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(20)(B)). The ''not employed rate'' is the percentage of individuals over the age of 18 who reside within the community and are ready, willing, and able to be employed but are unable to find employment, as determined by the Department of Labor of the State in which the community is located.

§ 5002.108 Tribal College Grants.

The requirements specified in §§ 5002.1 through 5002.14 and §§ 5002.60 through 5002.80 of this part apply to Tribal College grants. In addition, the requirements specified in paragraphs (a) through (f) of this section apply to Tribal College grants.

(a) *Notifications.* The Agency will issue each year a notice to Tribal colleges and universities that identifies:

(1) maximum grant size and

(2) the date that preapplications are to be submitted.

(b) *Applicant eligibility.* Only applicants that are 1994 Institutions are eligible for grants under this section.

(c) *Eligible projects and purposes.* Grant funds can only be used to develop facilities provided by the Tribal college or university.

(1) Eligible projects are those projects that meet the requirements specified in § 5002.101(b), except that § 5002.101(b)(3) does not apply to projects under this section.

(2) Eligible purposes are identified in § 5002.101(c) of this part.

(d) *Preapplications and applications.* All preapplications and applications must be submitted to the State Office in the State in which the Tribal college or university is located.

(1) *Preapplications.* Preapplications received by the Agency on or before the date specified in the notification issued under paragraph (a) of this section will receive priority consideration over preapplications received after the specified preapplication date.

(2) *Applications.* (i) Applications received on or before March 31 of each year will receive priority consideration

for funding over applications received by the Agency after March 31 for that fiscal year.

(ii) An applicant submitting more than one application in a year must provide a priority listing for the grants it is seeking.

(e) *Funding limitations*. The maximum amount of a grant awarded under this section will be no more than 95 percent of the total cost of the facility. The Agency shall not require a match of more than 5 percent of the total cost of the facility.

(f) *Award process*. The Agency will use a graduated scale, as specified in § 5002.101(e)(2), in selecting applications for funding. In addition, the Agency may:

(1) Choose to fund only one grant per round from a single applicant;

(2) reduce the grant amount for all applicants to a maximum level that will fund at least one application per Tribal college or university that applied during that round; and

(3) negotiate to increase the scope of Tribal College projects and grants if funds remain available after the grant selection round.

§§ 5002.109–5002.200 [Reserved.]

Dated: September 25, 2008.

Thomas C. Dorr,

Under Secretary for Rural Development.

[FR Doc. E8–23286 Filed 10–14–08; 8:45 am]

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Federal Register

Wednesday,
October 15, 2008

Part III

Environmental Protection Agency

40 CFR Part 197

Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 197

[EPA–HQ–OAR–2005–0083; FRL–8724–9]

RIN 2060–AN15

Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: We, the Environmental Protection Agency (EPA), are promulgating amendments to our public health and safety standards for radioactive material stored or disposed of in the potential repository at Yucca Mountain, Nevada. Congress directed us to develop these standards and required us to contract with the National Academy of Sciences (NAS) to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety. The health and safety standards promulgated by EPA are to be ''based upon and consistent with'' the findings and recommendations of NAS. Originally, these standards were promulgated on June 13, 2001 (66 FR 32074) (the 2001 standards).

On July 9, 2004, the U.S. Court of Appeals for the District of Columbia Circuit vacated portions of the 2001 standards concerning the period of time for which compliance must be demonstrated. The Court ruled that the compliance period of 10,000 years was not ''based upon and consistent with'' the findings and recommendations of the NAS and remanded those portions of the standards to EPA for revision. These remanded provisions are the subject of this action.

This final rule incorporates compliance criteria applicable at different times for protection of individuals and in circumstances involving human intrusion into the repository. Compliance will be judged against a standard of 150 microsieverts per year (μSv/yr) (15 millirem per year (mrem/yr)) committed effective dose equivalent (CEDE) at times up to 10,000 years after disposal and against a standard of 1 millisievert per year (mSv/yr) (100 mrem/yr) CEDE at times after 10,000 years and up to 1 million years after disposal. This final rule also includes several supporting provisions affecting the projections of expected disposal system performance prepared by the Department of Energy (DOE).

DATES: *Effective Date:* This final rule is effective on November 14, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0083. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov*, for purchase or access from sources identified in the docket (Docket Nos. EPA–HQ–OAR–2005–0083–0086 and EPA–HQ–OAR–2005–0083–0087), or in hard copy at the Air and Radiation Docket, EPA/DC, EPA Headquarters West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, Radiation Protection Division (6608J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–343–9360; fax number: 202–343–2305; e-mail address: *clark.ray@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

DOE is the only entity regulated by these standards. Our standards affect NRC only to the extent that, under Section 801(b) of the EnPA, 42 U.S.C. 10141 n., NRC must modify its licensing requirements, as necessary, to make them consistent with our final standards. Before it may construct the repository or accept waste at the Yucca Mountain site and eventually close the repository, DOE must obtain authorization for these activities from NRC. DOE will be subject to NRC's modified regulations, which NRC will implement through its licensing proceedings.

B. How Can I View Items in the Docket?

1. *Information Files.* EPA is working with the Lied Library at the University of Nevada-Las Vegas (*http://www.library.unlv.edu/about/hours.html*) and the Amargosa Valley, Nevada public library (*http://www.amargosalibrary.com*) to provide information files on this rulemaking. These files are not legal dockets; however, every effort will be made to put the same material in them as in the official public docket in Washington, DC. The Lied Library information file is at the Research and Information Desk, Government Publications Section (702–895–2200). Hours vary based upon the academic calendar, so we suggest that you call ahead to be certain that the library will be open at the time you wish to visit. The other information file is in the Public Library at 829 East Farm Road in Amargosa Valley, Nevada (phone 775–372–5340). As of the date of publication, the hours are Monday and Thursday (9 a.m.–7 p.m.); Tuesday, Wednesday, and Friday (9 a.m.–5 p.m.); and Saturday (9 a.m.-1 p.m.). The library is closed on Sunday. These hours can change, so we suggest that you call ahead to be certain when the library will be open.

2. *Electronic Access.* An electronic version of the public docket is available through the Federal Docket Management System at *http://www.regulations.gov*. You may use *http://www.regulations.gov* to view comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. To access the docket go directly to *http://www.regulations.gov* and select ''Advanced Docket Search'' under ''More Search Options.'' In the Docket ID window, type in the docket identification number EPA–HQ–OAR–2005–0083 and click on ''Submit.'' Please be patient since the search could take several minutes. This will bring you to the ''Docket Search Results'' page. From there, you may access the docket contents (*e.g.*, EPA–HQ–OAR–2005–0083–0002) by clicking on the icon in the ''Views'' column.

C. Can I Access Information by Telephone or Via the Internet?

Yes. You may call our toll-free information line (800–331–9477) 24 hours per day. By calling this number, you may listen to a brief update describing our rulemaking activities for Yucca Mountain, leave a message requesting that we add your name and address to the Yucca Mountain mailing list, or request that an EPA staff person return your call. In addition, we have established an electronic listserv through which you can receive electronic updates of activities related to this rulemaking. To subscribe to the listserv, go to *https://lists.epa.gov/read/*

all_forums. In the alphabetical list, locate ''yucca-updates'' and select ''subscribe'' at the far right of the screen. You will be asked to provide your e-mail address and choose a password. You also can find information and documents relevant to this rulemaking on the World Wide Web at *http://www.epa.gov/radiation/yucca*. The proposed rule for today's final rule appeared in the **Federal Register** on August 22, 2005 (70 FR 49014). We also recommend that you examine the preamble and regulatory language for the earlier proposed and final rules, which appeared in the **Federal Register** on August 27, 1999 (64 FR 46976) and June 13, 2001 (66 FR 32074), respectively.

D. What Documents are Referenced in This Final Rule?

We refer to a number of documents that provide supporting information for our Yucca Mountain standards. All documents relied upon by EPA in regulatory decision-making may be found in our docket (EPA–HQ–OAR–2005–0083). Other documents, e.g., statutes, regulations, and proposed rules, are readily available from public sources. The documents below are referenced most frequently in today's final rule.

Item No. (EPA–HQ–OAR–2005–0083–xxxx).

0076 Technical Bases for Yucca Mountain Standards (the NAS Report), National Research Council, National Academy Press, 1995.

0086 DOE Final Environmental Impact Statement, DOE/EIS–0250, February 2002.

0383 ''Geological Disposal of Radioactive Waste,'' International Atomic Energy Agency Final Safety Requirements (WS–R–4), 2006.

0417 ''Radiation Protection Recommendations as Applied to the Disposal of Long-Lived Solid Radioactive Waste,'' International Commission on Radiological Protection Publication 81, 2000.

0408 ''Regulating the Long-Term Safety of Geological Disposal: Towards a Common Understanding of the Main Objectives and Bases of Safety Criteria,'' OECD Nuclear Energy Agency, NEA–6182, 2007.

0421 ''1990 Recommendations of the International Commission on Radiological Protection,'' ICRP Publication 60.

0423 ''2007 Recommendations of the International Commission on Radiological Protection,'' ICRP Publication 103.

0431 Response to Comments Document for Final Rule, EPA–402–R–08–008, June 2007.

Acronyms and Abbreviations

We use many acronyms and abbreviations in this document. These include:

BID—background information document
CED—committed effective dose
CEDE—committed effective dose equivalent
CFR—Code of Federal Regulations
DOE—U.S. Department of Energy
EIS—Environmental Impact Statement
EnPA—Energy Policy Act of 1992
EPA—U.S. Environmental Protection Agency
FEIS—Final Environmental Impact Statement
FEPs—features, events, and processes
FR—**Federal Register**
GCD—greater confinement disposal
HLW—high-level radioactive waste
IAEA—International Atomic Energy Agency
ICRP—International Commission on Radiological Protection
NAS—National Academy of Sciences
NEA—Nuclear Energy Agency
NEI—Nuclear Energy Institute
NRC—U.S. Nuclear Regulatory Commission
NRDC—Natural Resources Defense Council
NTS—Nevada Test Site
NTTAA—National Technology Transfer and Advancement Act
NWPA—Nuclear Waste Policy Act of 1982, as amended
NWPAA—Nuclear Waste Policy Amendments Act of 1987
OECD—Organization for Economic Cooperation and Development
OMB—Office of Management and Budget
RMEI—reasonably maximally exposed individual
SSI—Swedish Radiation Protection Authority
SNF—spent nuclear fuel
TRU—transuranic
UK—United Kingdom
UMRA—Unfunded Mandates Reform Act of 1995
U.S.C.—United States Code
WIPP LWA—Waste Isolation Pilot Plant Land Withdrawal Act of 1992

Outline of This Action

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I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-income Populations
K. Congressional Review Act

I. What Is the History of This Action?

Radioactive wastes result from the use of nuclear fuel and other radioactive materials. Today, we are revising certain standards pertaining to spent nuclear fuel, high-level radioactive waste, and other radioactive waste (we refer to these items collectively as ''radioactive materials'' or ''waste'') that may be stored or disposed of in the Yucca Mountain repository. When we discuss storage or disposal in this document in reference to Yucca Mountain, we note that, while Public Law 107–200 approved the site at Yucca Mountain for the development of a repository for the disposal of spent nuclear fuel and high-level radioactive waste, no licensing decision has been made regarding the acceptability of the proposed Yucca Mountain facility for storage or disposal as of the date of this publication. To save space and to avoid excessive repetition, we will not describe Yucca Mountain as a ''potential'' repository; however, we intend this meaning to apply.

Once nuclear reactions have consumed a certain percentage of the uranium or other fissionable material in nuclear reactor fuel, the fuel no longer is useful for its intended purpose. It

then is known as ''spent'' nuclear fuel (SNF). It is possible to recover specific radionuclides from SNF through ''reprocessing,'' which is a process that dissolves the SNF, thus separating the radionuclides from one another. Radionuclides not recovered through reprocessing become part of the acidic liquid wastes that the Department of Energy (DOE) plans to convert into various types of solid materials. High-level radioactive waste (HLW) is the highly radioactive liquid or solid wastes that result from reprocessing SNF. The SNF that does not undergo reprocessing prior to disposal remains inside the fuel assembly and becomes the final waste form for disposal in the repository.

In the United States, SNF and HLW have been produced since the 1940s, mainly as a result of commercial power production and national defense activities. Since the inception of the nuclear age, the proper disposal of these wastes has been the responsibility of the Federal government. The Nuclear Waste Policy Act of 1982, as amended (NWPA, 42 U.S.C. Chapter 108) sets forth the framework for the disposal of SNF and HLW. In general, DOE is responsible for siting, constructing, and operating an underground geologic repository for the disposal of SNF and HLW and the Nuclear Regulatory Commission (NRC) is responsible for licensing the construction and operation of this repository, including permanent closure and decommissioning of the surface facilities. In making this licensing decision for the Yucca Mountain repository, NRC must utilize radiation protection standards that EPA establishes pursuant to section 801(a) of the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486).[1] Thus, today we are promulgating amendments to our public health protection standards at 40 CFR part 197 (which, pursuant to EnPA section 801(a), apply only to releases of radioactive material stored or disposed of at the Yucca Mountain site, rather than generally applicable). NRC will amend its regulations to be consistent with these standards.

On June 3, 2008, pursuant to the NWPA, as amended, DOE submitted a license application to NRC seeking a license to construct the repository. NRC will determine whether DOE has met NRC's requirements, including those implementing 40 CFR part 197, and whether to grant or deny authorization to construct the repository and a license to receive radioactive material at the Yucca Mountain site.

[1] EnPA, Public Law No. 102–486, 102 Stat. 2776, 42 U.S.C. 10141 n. (1994).

In 1985, we established generic standards for the management, storage, and disposal of SNF, HLW, and transuranic (TRU) radioactive waste (see 40 CFR part 191, 50 FR 38066, September 19, 1985), which were intended to apply to facilities utilized for the storage or disposal of these wastes, including Yucca Mountain. In 1987, the U.S. Court of Appeals for the First Circuit remanded the disposal standards in 40 CFR part 191 (*NRDC* v. *EPA,* 824 F.2d 1258 (1st Cir. 1987)). We later amended and reissued those standards to address issues that the court raised. Also in 1987, the Nuclear Waste Policy Amendments Act (NWPAA, Pub. L. 100–203) amended the NWPA by, among other actions, selecting Yucca Mountain, Nevada, as the only potential site that DOE should characterize for a geologic repository for SNF and HLW. In October 1992, Congress enacted the EnPA and the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA, Pub. L. 102–579). These statutes changed our obligations concerning radiation standards for the Yucca Mountain candidate repository. The WIPP LWA:

(1) Reinstated the 40 CFR part 191 disposal standards, except those portions that were the specific subject of the remand by the First Circuit;

(2) Required us to issue standards to replace the portion of the challenged standards remanded by the court; and

(3) Exempted the Yucca Mountain site from the 40 CFR part 191 disposal standards.

We issued the amended 40 CFR part 191 disposal standards, which addressed the judicial remand, on December 20, 1993 (58 FR 66398).

The EnPA set forth our responsibilities as they relate to Yucca Mountain and directed us to set public health and safety radiation standards for Yucca Mountain. Specifically, section 801(a)(1) of the EnPA directed us to ''promulgate, by rule, public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site.'' Section 801(a)(2) directed us to contract with the National Academy of Sciences (NAS) to conduct a study to provide us with its findings and recommendations on reasonable standards for protection of public health and safety from releases from the Yucca Mountain disposal system. Moreover, it provided that our standards shall be the only such standards applicable to the Yucca Mountain site and are to be based upon and consistent with NAS's findings and recommendations. On August 1, 1995, NAS released its report, ''Technical Bases for Yucca Mountain Standards'' (the NAS Report) (Docket No. EPA–HQ–OAR–2005–0083–0076).

A. Promulgation of 40 CFR Part 197 in 2001

Pursuant to the EnPA, we developed standards specifically applicable to releases from radioactive material stored or disposed of in the Yucca Mountain repository. In doing so, we considered the NAS Report, our generic standards in 40 CFR part 191, and other relevant information, precedents, and analyses.

We evaluated 40 CFR part 191 because those standards were developed to apply to sites selected for storage and disposal of SNF and HLW. Thus, we believed that 40 CFR part 191 already included the major components of standards needed for any specific site, such as Yucca Mountain. However, we recognized that all the components would not necessarily be directly transferable to the situation at Yucca Mountain, and that some modification might be necessary. We also considered that some components of the generic standards would not be carried into site-specific standards, since not all of the conditions found among all potential sites are present at Yucca Mountain. See 66 FR 32076–32078, June 13, 2001 (Docket No. EPA–HQ–OAR–2005–0083–0042), for a more detailed discussion of the role of 40 CFR part 191 in developing 40 CFR part 197.

We also considered the findings and recommendations of the NAS in developing standards for Yucca Mountain. In some cases, provisions of 40 CFR part 191 were already consistent with NAS's analysis (e.g., level of protection for the individual). In other cases, we used the NAS Report to modify or draw out parts of 40 CFR part 191 to apply more directly to Yucca Mountain (e.g., the stylized drilling scenario for human intrusion). See the NAS Report for a complete description of findings and recommendations (Docket No. EPA–HQ–OAR–2005–0083–0076).

Because our standards are intended to apply specifically to the Yucca Mountain disposal system, we tailored our approach to consider the characteristics of the site and the local populations. Yucca Mountain is in southwestern Nevada approximately 100 miles northwest of Las Vegas. The eastern part of the site is on the Nevada Test Site (NTS). The northwestern part of the site is on the Nevada Test and Training Range (referred to in our proposal as the Nellis Air Force Range). The southwestern part of the site is on Bureau of Land Management land. The

area has a desert climate with topography typical of the Basin and Range province. Yucca Mountain is made of layers of ashfalls from volcanic eruptions that happened more than 10 million years ago. There are two major aquifers beneath Yucca Mountain. Regional ground water in the vicinity of Yucca Mountain is believed to flow generally in a south-southeasterly direction. For more detailed descriptions of Yucca Mountain's geologic and hydrologic characteristics, and the disposal system, please see Chapter 7 of the 2001 Background Information Document (BID) (Docket No. EPA–HQ–OAR–2005–0083–0050) and the preamble to the proposed rule (64 FR 46979–46980, August 27, 1999, Docket No. EPA–HQ–OAR–2005–0083–0041).

We proposed the original standards for Yucca Mountain on August 27, 1999 (64 FR 46976). In response to our proposal, we received more than 800 public comments and conducted four public hearings. After evaluating public comments, we issued final standards (66 FR 32074, June 13, 2001). See the Response to Comments document from that rulemaking for more discussion of comments (Docket No. EPA–HQ–OAR–2005–0083–0043).

The final standards issued in 2001 as 40 CFR part 197 included the following:

- A standard to protect the public during management and storage operations on the Yucca Mountain site;
- An individual-protection standard to protect the public from releases from the undisturbed disposal system;
- A human-intrusion standard to protect the public after disposal from releases caused by a drilling penetration into the repository;
- A set of standards to protect ground water from radionuclide contamination caused by releases from the disposal system;
- The requirement that compliance with the disposal standards be shown for 10,000 years;
- The requirement that DOE continue its projections for the individual-protection and human-intrusion standards beyond 10,000 years to the time of peak (maximum) dose, and place those projections in the Environmental Impact Statement (EIS) for Yucca Mountain;
- The concept of the Reasonably Maximally Exposed Individual (RMEI), defined as a hypothetical person whose lifestyle is representative of the local population living today in the Town of Amargosa Valley, as the individual against whom the disposal standards should be assessed; and
- The concept of a ''controlled area,'' defined as an area immediately surrounding the repository whose geology is considered part of the natural barrier component of the overall disposal system, and inside of which radioactive releases are not regulated.

More detail on these aspects of the 2001 final rule may be found at 66 FR 32074–32134, June 13, 2001, and 70 FR 49019–49020, August 22, 2005.

B. Legal Challenges to 40 CFR Part 197

Various aspects of our standards were challenged in lawsuits filed with the U.S. Court of Appeals for the District of Columbia Circuit in July 2001. These challenges and the Court's subsequent ruling are described briefly here, emphasizing the aspects leading to today's final rule, and in more detail in the preamble to the proposed rule (70 FR 49014, August 22, 2005).

The State of Nevada, the Natural Resources Defense Council (NRDC), and several other petitioners challenged various aspects of our final standards on the grounds that they were insufficiently protective and had not been adequately justified. The focus of this challenge was the 10,000-year compliance period. Nevada and NRDC claimed that EPA's promulgation of numerical standards that applied for 10,000 years after disposal violated the EnPA because such standards were not ''based upon and consistent with'' the findings and recommendations of the NAS. NAS recommended standards that would apply to the time of maximum risk, within the limits imposed by the long-term geologic stability of the site, and stated that there is ''no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value.'' (NAS Report p. 55) The Nuclear Energy Institute (NEI) challenged the ground-water protection standards as unnecessary to protect public health and safety, contrary to recommendations of the NAS, and outside our authority under the EnPA.

The DC Circuit Court's July 9, 2004 decision dismissed NEI's challenge, and all of the challenges by Nevada and NRDC, except one. On the question of EPA's 10,000-year compliance period, the Court upheld the challenge, ruling that EPA's action was not ''based upon and consistent with'' the NAS Report, and that EPA had not sufficiently justified on policy grounds its decision to apply compliance standards only to the first 10,000 years after disposal. *Nuclear Energy Institute* v. *Environmental Protection Agency,* 373 F.3d 1251 (D.C. Cir. 2004) (*NEI*).

The Court concluded that ''we vacate 40 CFR part 197 to the extent that it incorporates a 10,000-year compliance period * * *.'' (*Id.* at 1315) The Court did not address the protectiveness of the 150 μSv/yr (15 mrem/yr) dose standard applied over the 10,000-year compliance period, nor was the protectiveness of the 15 mrem/yr standard challenged. It ruled only that the compliance period was not consistent with or based upon the NAS findings and recommendations and, therefore, was contrary to the plain language of the EnPA.

As the Court noted, NAS stated that it had found ''no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value,'' and that ''compliance assessment is feasible * * * on the time scale of the long-term stability of the fundamental geologic regime—a time scale that is on the order of 10^6 years at Yucca Mountain.'' As a result, and given that ''at least some potentially important exposures might not occur until after several hundred thousand years * * * we recommend that compliance assessment be conducted for the time when the greatest risk occurs.'' (NAS Report pp. 6–7) Today's action addresses this recommendation and the DC Circuit ruling.

II. Summary of Proposed Amendments to 40 CFR Part 197 and Public Comments

The primary goal of our proposal issued in 2005 was to gather public comment on the appropriate response to the Court decision and NAS recommendation to assess compliance at the time of maximum dose (risk). Therefore, our proposed amendments centered on extending the compliance period to capture the peak projected dose from the Yucca Mountain disposal system ''within the limits imposed by the long-term stability of the geologic environment.'' (NAS Report p. 2) Of course, establishing a radiological protection standard to apply at the time of peak dose is a uniquely challenging task. Only a small number of countries have established standards of any kind for the geologic disposal of SNF and HLW. Of these, only Switzerland has established a quantitative standard applicable for as long as 1 million years, although we are aware that other regulatory bodies outside the U.S. are contemplating the need to establish some type of regulation addressing these extremely long time frames. Comments received in the course of this rulemaking have been helpful given the extraordinary technical complexity of this task.

A. How Did We Propose To Amend Our 2001 Standards?

We considered carefully the language and reasoning of the Court's decision in revising our 2001 standards. As originally promulgated in 2001, 40 CFR part 197 contained four sets of standards against which compliance would be assessed. The storage standard applies to exposures of the general public during the operational period, when waste is received at the Yucca Mountain site, handled in preparation for emplacement in the repository, emplaced in the repository, and stored in the repository until final closure. The three disposal standards apply to releases of radionuclides from the disposal system after final closure, and include an individual-protection standard, a human-intrusion standard, and a set of ground-water protection standards.

The Court's ruling vacated only one aspect of 40 CFR part 197: The 10,000-year compliance period applicable to the disposal standards. Therefore, the storage standard, which is applicable only for the period before disposal, is not affected by the ruling. Further, the Court recognized that the ground-water protection standards were issued as an expression of EPA's overall ground-water protection policies and were not among the standards addressed by the NAS, either in form or purpose (''NAS treated the compliance-period and ground-water issues quite differently * * * NAS made no 'finding' or 'recommendation' that EPA's regulation could fail to be 'based upon and consistent with' '' (*NEI*, 373 F.3d at 1282)). Therefore, we concluded that the Court's vacature of the 10,000-year compliance period, which was explicitly tied to recommendations concerning the individual-protection standard, does not extend to the ground-water provisions. As a result, we did not propose to amend the ground-water protection standards. Nothing in today's final rule affects those standards.

We proposed to revise only the individual-protection and human-intrusion standards, along with certain supporting provisions related to the way DOE must consider features, events, and processes (FEPs) in its compliance analyses (70 FR 49014, August 22, 2005). In addition, we proposed to adopt updated scientific factors for calculating doses to show compliance with the storage, individual-protection, and human-intrusion standards. We requested comments only on those aspects of the individual-protection and human-intrusion standards which were to be amended. Specifically, we proposed to:

- Extend the compliance period for the individual-protection and human-intrusion standards to 1 million years after disposal (closure), consistent with NAS estimates regarding the ''long-term stability of the geologic environment'';
- Retain the dose standard of 150 μSv/yr (hereafter, 15 mrem/yr) committed effective dose equivalent (CEDE) for the first 10,000 years after disposal, as promulgated in 2001;
- Establish a dose standard of 3.5 mSv/yr (hereafter, 350 mrem/yr) CEDE for the period between 10,000 years and 1 million years;
- Clarify that the arithmetic mean of the distribution of projected results will be compared to the dose standard for the initial 10,000 years, and specify use of the median of the distribution of projected results between 10,000 and 1 million years;
- Retain the probability threshold (1 in 10,000 chance of occurring in 10,000 years, or 1 in 100 million chance of occurring per year) below which ''very unlikely'' FEPs may be excluded from consideration;
- Allow FEPs with a probability of occurring above the probability threshold to be excluded if they would not significantly affect the results of performance assessments in the initial 10,000 years;
- Require consideration of seismic and igneous events causing direct damage to the engineered barrier system during the 1 million-year period;
- Require consideration of the effects of increased water flow through the repository resulting from climate change, which could be represented by constant conditions between 10,000 and 1 million years;
- Require consideration of the effects of general corrosion of the engineered barriers between 10,000 and 1 million years; and
- Require use of updated scientific factors, based on Publications 60 and 72 of the International Commission on Radiation Protection (ICRP), to calculate dose for comparison with the storage, individual-protection, and human-intrusion standards.

B. What Factors Did We Consider in Developing Our Proposal?

Of great concern in extending the compliance period to 1 million years is the increasing uncertainty associated with numerical projections of radionuclide releases from the Yucca Mountain disposal system and subsequent exposures incurred by the Reasonably Maximally Exposed Individual (RMEI). This uncertainty affects not only the projections themselves, but also the interpretation of the results. There is general agreement in the international community that dose projections over periods as long as 1 million years cannot be viewed in the same context or with the same confidence as projections for periods as ''short'' as 10,000 years. As a result, the nature of regulatory decision-making fundamentally changes when faced with the prospect of compliance projections for the next 1 million years. International guidance from the International Atomic Energy Agency (IAEA) and Nuclear Energy Agency (NEA), as well as geologic disposal programs in other countries, recognize this difficulty and accommodate it by viewing longer-term projections in a more qualitative manner, to be balanced and supplemented by other considerations that would provide confidence in the long-term safety of the disposal system. In effect, numerical dose projections are given less weight in decision-making at longer times.[2] Such approaches discourage comparison of projections against a strict compliance limit.

This uncertainty was the overriding reason for limiting the compliance period to 10,000 years in our 2001 rule. We supplemented that 10,000-year compliance period by requiring DOE to continue projections through the time of peak dose, consistent with the approach favored by the international community. However, while we believed this approach was consistent with the NAS recommendation to assess compliance at the time of maximum dose (risk) and the committee's acknowledgment that policy considerations would also play a role in determining the compliance period, the Court concluded that it was inconsistent with the NAS recommendation. We concluded that the most direct way to address the Court's ruling would be to establish a numeric compliance standard for the time of peak dose, within the period of geologic stability at Yucca Mountain, which NAS judged to be ''on the order of one million years.'' (NAS Report p. 2)

In establishing our final standards, we have considered that the level of uncertainty increases as the time period covered by DOE's performance

[2] For example, the ICRP's most recent recommendations note that ''both the individual doses and the size of the exposed population become increasingly uncertain as time increases. The Commission is of the opinion that in the decision-making process, owing to the increasing uncertainties, giving less weight to very low doses and to doses received in the distant future could be considered.'' (Publication 103, 2007, Docket No. EPA–HQ–OAR–2005–0083–0423, Paragraph 222)

assessment increases.[3] Therefore, it is reasonable for us to consider how the compliance standard itself might also need to change. Specifically, we do not believe that extending the 10,000-year individual-protection standard of 15 mrem/yr to apply for 1 million years adequately accounts for the considerations outlined above or represents a reasonable test of the disposal system (more extensive discussion of uncertainty in performance assessments is in section III.A.4 of this document, ''How Did We Consider Uncertainty and Reasonable Expectation?''); see also 66 FR 32098. We turned back to the international technical literature for advice regarding appropriate points of comparison for doses projected over hundreds of thousands of years. A number of sources suggested that natural sources of radioactivity would provide an appropriate benchmark for such comparisons. In exploring this approach further, we found that the variation in background radiation across the United States covered a wide range (from roughly 100 mrem/yr to 1 rem/yr), primarily because of local variation in radon exposures. We chose for our proposal a level of 350 mrem/yr, which is close to a widely-cited estimate of 300 mrem/yr for the national average background radiation exposure (NAS Report Table 2–1), but specifically represented the difference between estimated background levels in Amargosa Valley and the State of Colorado. This level was proposed for both the individual-protection and human-intrusion standards as offering both a reasonable level of protection and a sound basis for regulatory decision-making when exposures are projected to occur hundreds of thousands of years into the future. Selecting such a level would also provide an indication that exposures incurred by the RMEI in the far future from the combination of natural background radiation and releases from the Yucca Mountain disposal system would not exceed exposures incurred by residents of other parts of the country today from natural sources alone. Today's final rule adopts a more stringent standard that is not derived from an analysis of background radiation, as explained in sections III.A.1 (''What is the Peak Dose Standard Between 10,000 and 1 Million Years After Disposal?'') and III.A.5 (''How Did We Consider Background Radiation in Developing The Peak Dose Standard?'') of this document.

Uncertainty in long-term projections also influenced our proposal. Given the probabilistic nature of performance assessments, it is possible that some combinations of parameter values will result in very high doses, even if such combinations have an extremely low probability of occurring. Although there may be only a few results that are very high, extreme results have the potential to exert a strong influence on the arithmetic mean, which could make the mean less representative of all performance projections. This possibility may be increased by the introduction of additional, and possible excessive, conservatisms as a way to account for uncertainties. We expressed a preference for a statistical measure that would not be strongly affected by either very high- or low-end estimates, believing it appropriate to focus on the ''central tendency'' of the distribution, where the bulk of the results might be expected to be found. We proposed the median of the distribution as being most representative of central tendency. Because it is always located at the point where half the distribution is higher and half lower, the median depends only on the relative nature of the distribution, rather than the absolute calculated values. Given our concerns about specifying a peak dose compliance value against which performance would be judged for a period up to 1 million years, we believed the median might also provide a reasonable test of long-term performance. Today's final rule departs from the proposal by adopting the arithmetic mean as the statistical measure of compliance to be applied at all times, as explained in section III.A.9 of this document (''How Will NRC Judge Compliance?'').

Our consideration of FEPs also was affected to some extent by uncertainty, as well as by conclusions of the NAS committee. In our proposal, the overall probability threshold for inclusion of FEPs remained the same as in the 2001 rule, which we believe provides a very inclusive initial screen that captures both major and minor factors potentially affecting performance. Uncertainty plays a role in the sense that very gradual or infrequent processes and events may begin to influence performance only at times in the hundreds of thousands of years, when the overall uncertainty of assessments is increasing. The additional uncertainty introduced by these slow-acting FEPs led us to propose the exclusion of FEPs if they were not significant to the assessments in the initial 10,000 years. We believed this would still provide for robust assessments that would address the factors of most importance over the entire 1 million-year period. We did consider in our proposal whether significant FEPs might not be captured using this approach. In evaluating whether excluded FEPs might become more probable or more significant after 10,000 years, and therefore should not be eliminated, we identified general corrosion as a FEP that is certain to occur and represents a significant failure mechanism at longer times, even though it is less significant in the initial 10,000 years.

We also consulted the NAS Report for advice on handling long-term FEPs. NAS identified three ''modifiers'' that it believed could reasonably be included in assessments: seismic events, igneous events, and climate change. (NAS Report p. 91) We developed provisions addressing these FEPs that incorporated the views expressed by the NAS. For seismic and igneous events, we proposed that DOE focus its attention on events causing direct damage to the engineered barriers. We took this approach because failure of the engineered barrier system, particularly the waste packages, is the predominant factor in determining the timing and magnitude of the peak dose, and is the overriding uncertainty in assessing performance of the disposal system. To address climate change, we required DOE to focus on the effects of increased water flow through the repository, which is the climatic effect with the most influence on release and transport of radionuclides. We determined that such a focus would provide the basis for a reasonable test of the disposal system, and that climate change beyond 10,000 years could be represented by constant conditions reflecting precipitation levels that differ from current conditions, which eliminates unresolvable speculation regarding the timing, magnitude, and duration of climatic cycles over this time frame. We also directed that NRC establish the exact nature of future climate characteristics to be used in performance assessments. NRC subsequently issued a proposal to specify a range of values for deep percolation into the repository, which DOE would use as another parameter in its probabilistic performance assessments. (70 FR 53313, September 8, 2005)

Finally, we proposed to update the factors used to calculate dose for the storage, individual-protection, and human-intrusion standards. Our generic standards in 40 CFR part 191, and by inference our Yucca Mountain standards in 2001, specified the factors associated with ICRP Publications 26

[3] ''We recognize that there are significant uncertainties in the calculations and that these uncertainties increase as the time at which peak risk occurs increases.'' (NAS Report p. 56)

and 30 (Docket Nos. EPA–HQ–OAR–2005–0083–0425 and 0428, respectively). Since we issued 40 CFR part 191, ICRP has modified the models and associated organ-weighting factors to more accurately calculate dose. See ICRP Publications 60 and 72 (Docket Nos. EPA–HQ–OAR–2005–0083–0421 and 0427, respectively). We used this newer method in 1999 to develop our Federal Guidance Report 13, ''Cancer Risk Coefficients from Exposure to Radionuclides'' (Docket No. EPA–HQ–OAR–2005–0083–0072). Where possible, we believe it is appropriate to adopt the latest scientific methods.[4]

C. In Making Our Final Decisions, How Did We Incorporate Public Comments on the Proposed Rule?

Section 801(a)(1) of the EnPA requires us to set public health and safety radiation protection standards for Yucca Mountain by rulemaking. Pursuant to Section 4 of the Administrative Procedure Act (APA), regulatory agencies engaging in informal rulemaking must provide notice of a proposed rulemaking, an opportunity for the public to comment on the proposed rule, and a general statement of the basis and purpose of the final rule.[5] The notice of proposed rulemaking required by the APA must ''disclose in detail the thinking that has animated the form of the proposed rule and the data upon which the rule is based.'' (*Portland Cement Association* v. *Ruckelshaus,* 486 F. 2d 375, 392–94 (DC Cir. 1973)) The public thus is enabled to participate in the process by making informed comments on the proposal. This provides us with the benefit of ''an exchange of views, information, and criticism between interested persons and the agency.'' (*Id.*)

There are two primary mechanisms by which we explain the issues raised in public comments and our reactions to them. First, we discuss broad or major comments in the succeeding sections of this preamble. Second, we are publishing a document, accompanying today's action, entitled ''Response to Comments'' (Docket No. EPA–HQ–OAR–2005–0083–0431). The Response to Comments document provides more detailed responses to issues addressed in the preamble. It also addresses all other significant comments on the proposal. We gave all the comments we received, whether written or oral, consideration in developing the final rule.

D. What Public Comments Did We Receive?

The public comment period ended November 21, 2005. We received more than 300 individual submittals, although any particular submittal could contain many specific comments. We also received many more submissions as part of mass comment efforts, in which organizations encourage commenters to use prepared texts or comment on specific aspects of the proposal. All, or representative, comments are available electronically through the Federal Document Management System (FDMS), available at *http://www.regulations.gov.* See the ''General Information'' section of this document for instructions on how to access the electronic docket. Some submittals may be duplicated in FDMS, as a commenter may have used several methods to ensure the comments were received, such as fax, e-mail, U.S. mail, or directly through FDMS.

A significant number of comments addressed the proposed peak dose standard of 350 mrem/yr, which would apply between 10,000 and 1 million years. Most commenters opposed our proposal, arguing that it is much higher than any previous standard, is not protective, is not equitable to future generations, and is based on inappropriate use of background radiation data. Many commenters also took issue with our proposal to use the median of the distribution of results as the statistical measure between 10,000 and 1 million years, viewing this measure as inconsistent with NAS recommendations to use the mean. Commenters also viewed the median as too ''lax'' and likely to discount scenarios that would result in high exposures. We also received comment on our proposal concerning the assessment of FEPs beyond 10,000 years, with some comments expressing the opinion that we had inappropriately constrained the analyses, leaving out potentially significant FEPs. Some commenters disagreed with our general premise that uncertainty increases with assessment time and further disagreed that we should take uncertainties into account when considering standards applicable to the far future. These specific comments, and our responses to them, will be discussed in more detail in section III of this document and in the Response to Comments document associated with this action (Docket No. EPA–HQ–OAR–2005–0083–0431).

Some commenters also questioned our conclusion that extending the compliance period is the appropriate way to respond to the Court ruling. These commenters point out that the Court's opinion could be interpreted to permit us to justify the approach taken in our 2001 standards. They cite statements by the Court such as ''[i]t would have been one thing had EPA taken the Academy's recommendations into account and then tailored a standard that accommodated the agency's policy concerns'' and ''[h]ad EPA begun with the Academy's recommendation to base the compliance period on peak dosage and then made adjustments to accommodate policy considerations not considered by NAS, this might be a very different case'' (*NEI,* 373 F.3d at 1270 and 1273, respectively) to support the thesis that the Court's judgment was based primarily on the presentation of our case, rather than the substance. In the commenters' view, the Court would have been receptive to our arguments had they been presented differently, and the Court provided a clear ''road map'' to justify keeping our original standards in place. In addition, these and other commenters viewed extending the compliance period to 1 million years as not justifiable either scientifically or as a matter of public policy. We believe that the approach we are taking is the most appropriate way to address the concerns raised by the Court's decision, particularly given the weight accorded by the Court to the NAS technical recommendations concerning the period of geologic stability. As we stated in our proposal, ''it is not clear how EPA's earlier explanation of its policy concerns might be reconciled with NAS's technical recommendation.'' (70 FR 49032) Accordingly, today's final rule implements the NAS technical recommendation with regard to the length of time for the compliance period while still accommodating our policy concerns in the provisions related to the peak dose standard, and FEPs.

We received some comments that suggested we should have provided more or better opportunities for public participation in our decision making process. For example, comments suggested that we should have rescheduled public hearings, extended the public comment period, and provided alternatives to the public hearing process. We provided numerous opportunities and avenues for public participation in the development of these standards. For example, we held public hearings in Washington, DC; Las

[4] ICRP published its most recent recommendations in Publication 103, issued in 2007 (Docket No. EPA–HQ–OAR–2005–0083–0423). EPA has not determined the impact of these recommendations on its current dose and risk estimates, but may decide to adopt them in the future. Today's final rule will incorporate the ICRP 60 recommendations as consistent with EPA's current federal guidance; however, we have provided some flexibility for use of newer dosimetry in the future if deemed appropriate by NRC.

[5] 5 U.S.C. 553.

Vegas, NV; and Amargosa Valley, NV. We also opened a 60-day public comment period and met with key stakeholders before and during that time. In response to requests from stakeholders, we extended the public comment period by 30 days and held an additional public hearing in Las Vegas. We conducted targeted outreach to Native American tribal groups and have fully considered all comments received through December 31, 2005, after the end of the extended public comment period. These measures are in full compliance with the public participation requirements of the Administrative Procedure Act.

Several commenters supported our role in setting standards for Yucca Mountain. Other commenters thought that aspects of our standards duplicate NRC's implementation role. We believe the provisions of this rule clearly are within our authority and they are central to the concept of a public health protection standard. We also believe our standards leave NRC the necessary flexibility to adapt to changing conditions at Yucca Mountain or to impose additional requirements in its implementation efforts, if NRC deems them to be necessary.

We also received many general comments, and others addressing topics that are outside the scope of our authority under the EnPA. For example, several commenters simply expressed their support for, or opposition to, the Yucca Mountain repository. Other comments suggested our standards should explicitly consider radiation exposures from all sources because of the site's proximity to the Nevada Test Site (NTS) and other sources of potential contamination. Also, a number of commenters suggested that we should explore alternative methods of waste disposal, such as neutralizing radionuclides. Comments also expressed concern regarding risks of transporting radioactive materials to Yucca Mountain. These comments all raise considerations that are outside the scope of our authority and this rulemaking.

Many comments touched on issues related to our authority and standards, but outside the limited scope of this rulemaking. In particular, many comments urged us to extend the ground-water protection limits to the time of peak dose within the 1 million-year compliance period. Many of these commenters disagreed with our position that the ground-water standards were not the subject of the Court's ruling, and that in fact the Court left us with discretion regarding the content and application of those standards. Others believed that we are obligated to accept comments on this topic, since we were proposing not to change the standards. We stated clearly in our proposal that we were not soliciting, and would not consider, comments on this issue.

III. What Final Amendments Are We Issuing With This Action?

This section describes the provisions of our final rule, our rationale, and our response to public comments on various aspects of our proposal. Today's final rule establishes the dose standards applicable for a period up to 1 million years after disposal, the statistical measures used to determine compliance with those standards, the methods to be used to calculate the dose, and the requirements for including features, events, and processes (FEPs) in the performance assessments.

A. What Dose Standards Will Apply?

Today's final rule includes an individual-protection standard consisting of two parts, which will apply over different time frames. The post-10,000-year public health protection standard limits the long-term peak dose to the RMEI from the Yucca Mountain disposal system to 1 mSv/yr (100 mrem/yr) committed effective dose equivalent (CEDE). This post-10,000-year (also referred to as the ''peak dose'') standard addresses and responds to the DC Circuit ruling that our 2001 standards, with the compliance period limited to 10,000 years, were inconsistent with the recommendations of the NAS. The post-10,000-year standard was the focus of our proposal and will apply after 10,000 years through the period of geologic stability, up to 1 million years after disposal. The other part of the individual-protection standard, which will apply over the initial 10,000 years after disposal, consists of the 150 μSv/yr (15 mrem/yr) CEDE individual-protection standard promulgated in 2001 as 40 CFR 197.20. We believe this approach maintains an appropriate emphasis on the initial condition of the repository and its critical early evolution, including the period when thermal stresses will be most significant.[6] As the disposal system evolves, today's final rule establishes a peak dose standard for the period up to 1 million years that is responsive to the Court's ruling, consistent with the NAS recommendation to establish a compliance standard for the time of peak risk, and satisfies our statutory mandate to protect public health and safety. The final rule also provides a reasonable test of disposal system performance by appropriately recognizing the relatively more difficult challenge in treating the uncertainties associated with projecting performance to such distant times, and the resulting lessened level of confidence that can be derived from such performance projections.

As we noted in our proposal, there was no legal challenge to, and the Court made no ruling on, the protectiveness of our standards up to 10,000 years. Further, the Court ruled that we must address peak dose, but did not state, and we do not believe intended, that we could not have additional measures to bolster the overall protectiveness of the standard. We believe that promulgating the post-10,000-year peak dose standard to protect public health and safety while retaining a separate individual-protection standard that focuses attention on the early evolution of the repository in the pre-10,000-year period enhances the overall protectiveness of our rule and is consistent with the findings and recommendations of the NAS committee. As the Court noted, the EnPA requires that EPA ''establish a set of health and safety standards, at least one of which must include an EDE-based, individual protection standard'' (*NEI*, 373 F.3d at 1281), but does not restrict us from issuing additional standards. Thus, as long as we address the NAS recommendation regarding peak dose, as we are doing today by issuing the post-10,000-year standard, we are not precluded from issuing other, complementary, standards to apply for a different compliance period. The Court's concern was whether we had been inconsistent with the NAS recommendation by not extending the period of compliance to capture the peak dose ''within the limits imposed by the long-term stability of the geologic environment.'' (NAS Report p. 2) Today's final rule defines the period of geologic stability for purposes of compliance as ending at 1 million years after disposal. We believe our decision to retain a separate standard applicable for the first 10,000 years after disposal during this period, along with ''at least one * * * EDE-based, individual protection standard'' applying to the peak dose during the period of geologic

[6] We noted in our 2001 rule: ''Focusing upon a 10,000-year compliance period forces more emphasis upon those features over which humans can exert some control, such as repository design and engineered barriers. Those features, the geologic barriers, and their interactions define the waste isolation capability of the disposal system. By focusing upon an analysis of the features that humans can influence or dictate at the site, it may be possible to influence the timing and magnitude of the peak dose, even over times longer than 10,000 years.'' (66 FR 32099)

stability between 10,000 years and 1 million years, protects public health and safety pursuant to the EnPA, complies with the Court's decision, falls well within our policy discretion and is supported by scientific considerations concerning the impact of uncertainties in projecting doses over extremely long time frames, as discussed in Section III.A.4 of this document (''How Did We Consider Uncertainty and Reasonable Expectation?'').

The NAS Report recognized the possible outcome of a rulemaking establishing separate standards that apply over different time periods. As discussed in more detail in Section III.A.6 (''How Does Our Rule Protect Future Generations?''), the committee contrasted an approach in which ''a health-based risk standard could be specified to apply uniformly across time and generations'' with ''some other expression of the principle of intergenerational equity'' to be determined by ''social judgment.'' (NAS Report pp. 56–57) The committee also recognized, as we have just explained, that ''the scientific basis for analysis changes with time'' in potentially significant ways as the time to peak dose increases. (NAS Report pp. 30–31) We also find it useful to consider the testimony of Mr. Robert Fri, chair of the NAS committee, before the Senate Environment and Public Works Committee on March 1, 2006, in his personal capacity, wherein he pointed out that ''the specification of the time horizon and the selection of the person to be protected are intimately connected.'' As a result, he explained that retaining the RMEI as the receptor (which the NAS committee recognized as more conservative than, but ''broadly consistent'' with, its preferred probabilistic critical group [7]) while at the same time extending the compliance period ''runs the risk of excessive conservatism,'' potentially putting the rule where the ''committee specifically did not want to be.'' He noted that the committee had considered and rejected such an approach. (See NAS Report pp. 100–103) Mr. Fri viewed our proposal of a higher dose limit between 10,000 and 1 million years as a way ''to avoid becoming overly conservative.'' Therefore, while he (like the NAS committee itself) offered no opinion on the *level* of the proposed post-10,000-year standard, he indicated that, in his opinion, our *approach* was not in conflict with the committee's intention, and would be closer to the committee's overall goal than would applying the 15 mrem/yr standard to the 1 million-year compliance period. He concluded by stating ''the committee recognized that EPA properly had considerable discretion in applying policy considerations outside the scope of our study to the development of the health standard for Yucca Mountain.'' (See generally NAS Report p. 3) See the hearing transcript at Docket No. EPA–HQ–OAR–2005–0083–0380 and Mr. Fri's prepared testimony at Docket No. EPA–HQ–OAR–2005–0083–0402. We believe the decision to establish two compliance standards falls well within our policy discretion and in that context the 10,000-year individual-protection standard is analogous to our ground-water protection standards, which were also not addressed by NAS recommendations.

1. What Is the Peak Dose Standard Between 10,000 and 1 Million Years After Disposal?

In establishing a public health and safety standard applicable at the time of peak dose, as required by the EnPA and recommended by the NAS, and after considering public comments on the issue, today's final rule adopts a more stringent standard than the proposed 3.5 mSv/yr (350 mrem/yr) standard. Specifically, we are today establishing an individual-protection standard of 1 mSv/yr (100 mrem/yr) to apply beyond 10,000 years and up to 1 million years after disposal.

As discussed in more detail later in this section, NAS expressly refrained from recommending any specific dose or risk limit for the compliance standard, but instead described ''the spectrum of regulations already promulgated that imply a level of risk, all of which are consistent with recommendations from authoritative radiation protection bodies'' for EPA's consideration. (NAS Report p. 49) Further, while NAS stated that a single standard ''could be specified to apply uniformly over time and generations,'' it also recognized that other approaches are possible as ''a matter for social judgment.'' (NAS Report pp. 56–57) NAS also recognized that the level of protection was a matter best left to EPA to establish through rulemaking: ''We do not directly recommend a level of acceptable risk.'' (NAS Report p. 49) NAS further noted that, while ''there is a considerable body of analysis and informed judgment from which to draw in formulating a standard for the proposed Yucca Mountain repository,'' ''EPA's process for setting the Yucca Mountain standard is presumably not bound by this experience.'' (NAS Report p. 39) Thus, the NAS Report contains no finding or recommendation as to the dose limit at the time of peak dose in our Yucca Mountain standards.

In selecting this final standard, we started with a range of annual fatal cancer risk (10^{-5} to 10^{-6}) that encompassed the 15 mrem/yr standard established in 2001 for the initial 10,000 years after disposal. We also considered the ''starting range'' identified by NAS in determining the appropriate level for the individual-protection standard to apply in the time period beyond 10,000 years. (NAS Report p. 49 and Tables 2–3 and 2–4) For the reasons discussed below, we determined that it would not be reasonable to apply a standard within that starting range for the entire million-year compliance period. Rather, we identified dose levels that are protective of public health and safety and that reasonably accommodate our policy concerns regarding the implementation of a compliance standard for 1 million years. For the same reasons, the Agency has determined that it is not reasonable to apply its traditional risk-management policies when establishing a compliance standard applicable for periods beyond 10,000 years and up to 1 million years (see section III.A.3, ''How Do Our Standards Protect Public Health and Safety?''). EPA does not believe it is realistic to demand that projections for such complex systems over this far future time frame be readily distinguishable at the level of incremental risk customarily addressed by the Agency in situations where results can be confirmed, modeling is utilized on a more limited scale, or institutional controls are more applicable.

In selecting 100 mrem/yr as the peak dose standard for the period beyond 10,000 years, we took particular note of the NAS's discussion of that dose level: ''Consistent with the current understanding of the related consequences, ICRP, NCRP, IAEA, UNSCEAR, and others have recommended that radiation doses above background levels to members of the public not exceed 1 mSv/yr (100 mrem/yr) effective dose for continuous or frequent exposure from radiation sources other than medical exposures. Countries that have considered national radiation protection standards in this area have endorsed the ICRP recommendation of 1 mSv per year radiation dose limit above natural background radiation for members of

[7] In discussing an alternative subsistence-farmer receptor, the committee noted that ''it makes the most conservative assumption that wherever and whenever the maximum concentration of radionuclides occurs in a ground water plume accessible from the surface, a farmer will be there to access it.'' (NAS Report p. 102) We have defined the RMEI to incorporate this same assumption.

the public.'' (NAS Report pp. 40–41) We also note that the 100 mrem/yr level is included in the range of regulations offered by NAS for EPA's consideration. (NAS Report Table 2–3)

Therefore, as we discussed in our proposal, a dose level of 100 mrem/yr level is well-established as protective of public health under current dose limits, and, as such, represents a robust public health protection standard in the extreme far future. (70 FR 49040) As noted by NAS, international organizations such as ICRP, IAEA, and NEA recommend its use as an overall public dose limit in planning for situations where exposures may be reasonably expected to occur. Although it had used the concept of public dose limits previously, ICRP first described its recommendations for a comprehensive system of radiation protection in Publication 60 (''1990 Recommendations of the ICRP'') (Docket No. EPA–HQ–OAR–2005–0083–0421). ICRP considered two referents in recommending a public dose limit: health detriment and ''variation in the existing level of dose from natural sources.'' ICRP concluded that estimates of health detriment ''suggest a value of the annual dose limit not much above 1 mSv.'' Similarly, ''[e]xcluding the very variable exposures to radon, the annual effective dose from natural sources is about 1 mSv, with values at high altitudes above sea level and in some geological areas of at least twice this. On the basis of all these considerations, the Commission recommends an annual limit on effective dose of 1 mSv.'' (Paragraphs 190–191) ICRP re-affirmed this position in its most recent recommendations: ''For public exposure in planned exposure situations, the Commission continues to recommend that the limit should be expressed as an effective dose of 1 mSv in a year.'' (Publication 103, Paragraph 245, Docket No. EPA–HQ–OAR–2005–0083–0423)

This recommendation as to a 100 mrem/yr public dose limit was adopted in the 1996 ''International Basic Safety Standards for Protection Against Ionizing Radiation and for the Safety of Radiation Sources,'' which was jointly sponsored by IAEA, NEA, the Food and Agriculture Organization of the United Nations, the International Labor Organization, the Pan American Health Organization, and the World Health Organization. (IAEA Safety Series 115, Schedule II, Docket No. EPA–HQ–OAR–2005–0083–0409) It should also be noted that the European Union requires its Member States to incorporate this 100 mrem/yr public dose limit into national law or regulation (Council Directive 96/29/EURATOM of 13 May 1996, Docket No. EPA–HQ–OAR–2005–0083–0410). Non-EU countries such as Argentina, Australia, Canada, and Japan also incorporate this public dose limit into their systems of regulation, as shown by their national reports under the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (see *http://www-ns.iaea.org/conventions/waste-jointconvention.htm*). The United States is also a Contracting Party to the Joint Convention (Docket No. EPA–HQ–OAR–2005–0083–0393).

Domestically, both NRC and DOE incorporate the 100 mrem/yr level into their systems of regulation (10 CFR 20.1301 and DOE Order 5400.5, respectively), and NCRP also endorses the ICRP system of protection (NCRP Report 116, ''Limitation of Exposure to Ionizing Radiation,'' Docket No. EPA–HQ–OAR–2005–0083–0407). In setting today's peak dose standard, EPA acknowledges and concurs in the broad consensus in the protectiveness of the 100 mrem/yr level and, furthermore, considers it especially suitable for application to the extreme far future, when planning for and projecting public exposures is much less certain.

For all these reasons, we conclude that the 100 mrem/yr peak dose standard we are establishing today for the period beyond 10,000 years will protect public health and safety. By considering international guidance and examples, we have derived a final peak dose limit that balances the competing factors highlighted by NAS and acknowledged by us as important: the dual objectives of promulgating a standard that is protective of the health and interests of future generations, and also effectively addressing the effects of uncertainty on compliance assessment. Moreover, the 100 mrem/yr level is comparable to the domestic and international standards NAS suggested that EPA consider. (NAS Report p. 49 and Tables 2–3 and 2–4)

Our selection of a 100 mrem/yr standard is therefore protective and reasonable in that it effectively addresses the factors it is necessary to consider when projecting exposures very far into the future. By applying this standard over the entire period of geologic stability beyond 10,000 years (up to 1 million years), our approach is consistent with the NAS recommendation to have a standard with compliance measured ''at the time of peak risk, whenever it occurs, within the limits imposed by the long-term stability of the geologic environment, which is on the order of one million years.'' (NAS Report p. 2)

Although we have not used specific estimates of background radiation in determining our final peak dose standard, as we had proposed, we note that the 100 mrem/yr level reasonably comports with such an analysis as well. For example, it is comparable to outdoor (unshielded) measurements of cosmic and terrestrial radiation in Amargosa Valley. When shielding from buildings is considered and indoor radon doses are estimated using a more conservative conversion factor suggested by some commenters, 100 mrem/yr is at the low end of overall background radiation estimates in Amargosa Valley and nationally.[8] Within the State of Nevada, the difference in average estimates of background radiation for counties is greater than 100 mrem/yr. (Docket No. EPA–HQ–OAR–2005–0083–0387) This suggests that 100 mrem/yr can be considered to be a level such that the total potential doses incurred by the RMEI from the combination of background radiation and releases from Yucca Mountain will remain below doses incurred by residents of other parts of the country from natural sources alone. See Section III.A.5 of this document for more discussion of background radiation (''How Did We Consider Background Radiation in Developing the Peak Dose Standard?'').

Our proposal discussed several factors that we considered to be important in setting a dose standard for the time of peak dose within the period of geologic stability. We emphasized the cumulative and increasing uncertainty in projecting potential doses over great time periods, and argued against viewing projected doses as predictions of disposal system performance. This is consistent with the position taken by the NAS committee: ''The results of compliance analysis should not, however, be interpreted as accurate predictions of the expected behavior of a geologic repository.'' (NAS Report p. 71)

We also have considered how the role of quantitative projections in making compliance decisions must change as the time covered by those projections increases to the extreme far future. We noted that emphasizing incremental dose increases when such increases may be overwhelmed by fundamental uncertainties inappropriately takes attention away from an evaluation of the

[8] NAS cited an estimate of 300 mrem/yr as the national average for natural background radiation (cosmic, terrestrial, radon, and radioactive isotopes internal to the human body). (NAS Report Table 2–1) This is the best-known estimate of average natural background in the U.S., but does not use the more conservative radon dose conversion factor provided by public comments.

overall safety of the disposal system, which may rest equally on other lines of evidence, such as confidence in the long-term stability of the site or reference to natural analogues. In our view, in order to provide a reasonable test of the disposal system, the role of the peak dose standard in the overall decision of disposal system safety must be consistent with the relative confidence that can be placed in quantitative projections over extremely long times. We have recognized the strong consensus in the international radioactive waste community that dose projections extending many tens to hundreds of thousands of years into the future can best be viewed as qualitative indicators of disposal system performance, rather than as firm predictions that can be compared against strict numerical compliance criteria. In fact, international organizations have treated such numerical criteria in a more flexible way and supported their application in conjunction with other qualitative considerations in applying them to regulatory determinations over very long time frames.[9] Further, we agree that confidence in the way the projections were performed, and the consideration of supporting qualitative information, may be more important to an overall judgment of safety at longer times.[10] However, our task is to establish a numerical compliance limit, rather than a qualitative standard or dose target. Therefore, we believe it is appropriate in setting that limit to evaluate and apply the considerations that have led the international radiation protection community to view long-term projections in a more qualitative manner.

We conclude that a peak dose standard of 100 mrem/yr for the Yucca Mountain disposal system for the period between 10,000 and 1 million years protects public health and safety. Setting the standard as we have is also consistent with the NAS committee's decision not to recommend a level for the final peak standard and EPA's broad discretion to establish standards that are protective while accommodating technical and policy concerns inherent in projecting and evaluating potential events hundreds of thousands of years into the future. See section III.A.3 of this document for more discussion of the protectiveness of our standards (''How Does Our Final Rule Protect Public Health and Safety?'').

The ICRP recommendation for a public dose limit of 100 mrem/yr relates to the total exposure to members of the public from all manmade sources (excluding occupational, accidental, and medical, which can be significantly higher). A number of comments took issue with our approach and suggestion that it might be reasonable to ''apportion'' the entire 100 mrem/yr to the Yucca Mountain disposal system because of the lack of other potential sources in the region, and that this could be considered consistent with the NAS recommendation to rely on current conditions and present knowledge. The comments expressed the view that such an approach would be entirely contrary to the NAS recommendation to apply apportionment, as well as to the principle of apportionment itself, which recognizes the potential for new or additional sources of exposure to be developed.

NAS made no recommendation or finding regarding apportionment. In its discussion of apportionment, NAS noted that the concept had been widely adopted (NAS Report pp. 40–41). NAS also noted that ''guidance to date has been for expected exposures from routine practices. There is little guidance on potential exposures in the far distant future.'' (NAS Report p. 41). NAS made no specific recommendation that EPA apply the concept to Yucca Mountain, let alone how the concept should be applied.

Further, given our statutory obligation under the EnPA to establish a site-specific standard, allocating 100 mrem/yr to a single source at the time of peak dose is reasonable because other contributors currently in the Yucca Mountain area are negligible by comparison (FEIS, DOE/EIS–0250, section 8.3.2, Docket No. EPA–HQ–OAR–2005–0083–0086). By relying on current conditions, as recommended by NAS, rather than speculating on potential future sources of exposure to the local population, it is reasonable for EPA to allocate the entire 100 mrem/yr to the Yucca Mountain disposal system. By assuming that current conditions will apply in the future, we are applying an approach routinely applied internationally, as well as by EPA in its WIPP compliance criteria (the ''future states'' assumption at 40 CFR 194.25).[11]

EPA's application of the concept of apportionment is, moreover, reasonable. We addressed the apportionment approach in conjunction with our 10,000-year standard of 15 mrem/yr as consistent with EPA's overall risk management approach and past actions. However, we do not agree that it is either required or reasonable to follow the apportionment approach over hundreds of thousands of years, when the level of uncertainty in dose projections is significantly increased and the ability to project the performance of engineered barriers and the overall disposal system with a high degree of certainty decreases. This position is consistent with general

[9] The 2007 NEA document on ''Consideration of Timescales in Post-Closure Safety of Geological Disposal of Radioactive Waste,'' which is based on surveys of NEA Member Countries, states ''Calculated values of dose and risk are therefore viewed in regulations not as predictions but rather as indicators or measures of protection that are used to test the capability of the system to provide isolation of the waste and containment of radionuclides (the 'dose' that is being calculated is what radio-protectionists refer to as 'potential dose'). These indicators are to be evaluated on the basis of models that include certain stylized assumptions, in particular regarding the biosphere and human lifestyle or actions.'' (Docket No. EPA–HQ–OAR–2005–0083–0411, p. 38) NEA also notes: ''There is agreement that calculations of dose and risk in the future are illustrations of possible system behaviour rather than predictions of outcomes, and there is consensus that, in the long term, numerical criteria for radioactive waste disposal should be considered as references or indicators, addressing the ultimate safety objectives, rather than as absolute limits in a legal context.'' (''Regulating the Long-Term Safety of Geological Disposal: Towards a Common Understanding of the Main Objectives and Bases of Safety Criteria,'' NEA–6182, Docket No. EPA–HQ–OAR–2005–0083–0408, p. 24) Similarly, ICRP Publication 81 contrasts the approach of ''consideration of quantitative estimates of dose or risk on the order of 1000 to 10,000 years'' with ''consideration of quantitative calculations further into the future making increasing use of stylized approaches and considering the time periods when judging the calculated results. Qualitative arguments could provide additional information to this judgmental process.'' (Docket No. EPA–HQ–OAR–2005–0083–0417, Paragraph 71) The IAEA consensus document for geologic disposal (''Safety Requirements for Geological Disposal of Radioactive Waste,'' WS–R–4, 2006) states: ''It is recognized that radiation doses to individuals in the future can only be estimated and that the uncertainties associated with these estimates will increase for times farther into the future. Care needs to be exercised in using the criteria beyond the time when the uncertainties become so large that the criteria may no longer serve as a reasonable basis for decisionmaking.'' (Docket No. EPA–HQ–OAR–2005–0083–0383, Paragraph 2.12)

[10] Such considerations are not unusual in other applications. For example, in making plans based on weather forecasts, one can expect the next-day forecast to be fairly accurate. However, one has to recognize that the same degree of accuracy cannot be expected from longer-range forecasts. In that case, one would want to have confidence that the forecast is based upon the most current scientific understanding of weather patterns.

[11] For example, IAEA notes that in modeling over longer time frames, ''The emphasis of assessment should therefore be changed so that the calculations relating to the near-surface zone and human activity are simplified by assuming present day communities under present conditions.'' (TECDOC–767, Docket No. EPA–HQ–OAR–2005–0083–0044, p. 19) The French Basic Safety Rule III.2.f specifies that ''The characteristics of man will be considered to be constant (sensitivity to radiation, nature of food, contingency of life, and general knowledge without assuming scientific progress, particularly in the technical and medical fields).'' (Docket No. EPA–HQ–OAR–2005–0083–0389, Section 3.2)

international practice and guidance, in which regulatory judgments rely less on compliance with quantitative standards and more on other qualitative factors supporting the overall safety case. Thus, for example, IAEA recognizes in the consensus document ''Safety Requirements for Geological Disposal of Radioactive Waste'' (WS–R–4, Docket No. EPA–HQ–OAR–2005–0083–0383) the general agreement of the geologic disposal community that, while apportionment is pertinent to geologic disposal, it cannot be assumed to apply indefinitely.[12] Moreover, IAEA reaches this conclusion on the basis of uncertainty in projecting exposure from a specific long-term source, without regard to the presumed knowledge, or lack thereof, of other potential sources of exposure. We believe our approach is consistent with the long-held international view of 10,000 years generally as a demarcation point prior to which quantitative dose projections can be reasonably well-managed, but beyond which those projections become progressively more uncertain and less valuable.[13] In our view, it is preferable to follow this well-established precedent rather than to attempt to define a different transition point based on the level and timing of uncertainty in dose projections. As discussed in more detail later in this section, countries that have established dose or risk standards for geologic disposal have typically applied them for 10,000 years or less, suggesting that this is a period of time within which standards comparable to those applied to current practices can ''serve as a reasonable basis for decision making.'' Beyond that time, the initial ''criteria,'' or dose standards, are viewed more qualitatively or entirely different criteria that are not expressed in terms of risk or dose are applied.[14]

Moreover, we note that under 10 CFR 20.1301, NRC requires that licensees conduct operations so that the total effective dose equivalent to individual members of the public from ''the licensed operation'' does not exceed 100 mrem/yr. Thus, this regulatory limit applies to individual licensees operating today, without reference to other potential sources of exposure to the public. Of course, some types of NRC licensees, such as fuel cycle facilities subject to our standards in 40 CFR part 190, must meet dose constraints lower than the 100 mrem/yr limit. Nonetheless, 100 mrem/yr is the public dose limit from licensed operations imposed in NRC regulations.

We disagree with those comments generally questioning both the legality and the protectiveness of our proposal to establish a long-term standard higher than 15 mrem/yr. As described previously in section III.A (''What Dose Standards Will Apply?''), commenters stated that the NAS Report and Court decision required us to retain a single dose standard (i.e., 15 mrem/yr) for the entire 1 million-year compliance period, equivalent to the period of geologic stability defined in our rule. Commenters pointed out that the proposed level was well above the range identified by NAS as a starting point for our rulemaking, and therefore stated that only the 15 mrem/yr level could be considered consistent with the committee's recommendation. Similarly, some commenters interpreted the Court ruling to require us to adjust the time period covered by the existing 15 mrem/yr standard, which was not challenged. We do not believe this interpretation to be correct. It should be emphasized that NAS identified a range of risks represented by current national and international standards, ''all of which are consistent with recommendations from authoritative radiation protection bodies,'' suggested only a ''reasonable starting point'' for our rulemaking, and that none of the regulatory precedents considered by NAS applied for periods approaching 1 million years. (NAS Report pp. 5 and 49, respectively) In fact, NAS explicitly declined to recommend a level of protection, recognizing that this was a matter best left to EPA to establish through rulemaking: ''We have not recommended what levels of risk are acceptable * * * The specific level of acceptable risk cannot be identified by scientific analysis, but must rather be the result of a societal decision-making process. Because we have no particular authority or expertise for judging the outcome of a properly constructed social decision-making process on acceptable risk, we have not attempted to make recommendations on this important question.'' (NAS Report p. 20) Indeed, NAS explicitly acknowledged ''that determining what risk level is acceptable is not ultimately a question of science but of public policy.'' (NAS Report p. 5) Further, NAS noted that the final outcome of the rulemaking might diverge substantially from the starting point suggested by NAS: ''Finally we have identified several instances where science cannot provide all of the guidance necessary to resolve an issue * * * In these cases, we have tried to suggest positions that could be used by the responsible agency in formulating a proposed rule. Other starting positions are possible, and of course *the final rule could differ markedly from any of them.*'' (NAS Report p. 3, emphasis added) Thus, we agree with NAS that the selection of a level for the peak dose standard is one of the regulatory policy issues left to EPA's discretion by the EnPA. As stated earlier, we find that the annual risk associated with the final peak dose standard of 100 mrem/yr is

[12] In describing criteria relevant to apportionment, IAEA states: ''It is recognized that radiation doses to individuals in the future can only be estimated and that the uncertainties associated with these estimates will increase for times farther into the future. *Care needs to be exercised in using the criteria beyond the time when the uncertainties become so large that the criteria may no longer serve as a reasonable basis for decision making.*'' (Paragraph 2.12, emphasis added) Similarly, NEA cites IAEA and ICRP in noting that ''Generally speaking, these documents recommend that the same criteria should be used as are applied for radiation protection from current practices. These documents also recognise, however, that *such criteria cannot be applied in the same way for the distant future as they are for current practices.*'' (NEA–6182, Docket No. EPA–HQ–OAR–2005–w0083–0408, p. 19, emphasis added)

[13] ICRP clearly expresses this view in Publication 81: ''To evaluate the performance of waste disposal systems over long time scales, one approach is the consideration of quantitative estimates of dose or risk on the order of 1000 to 10,000 years. This approach focuses on that period when the calculation of doses most directly relates to health detriment and also recognises the possibility that over longer time frames the risks associated with cataclysmic geologic changes such as glaciation and tectonic movements may obscure risks associated with the disposal system. Another approach is the consideration of quantitative calculations further into the future making increased use of stylised approaches and considering the time periods when judging the calculated results. Qualitative arguments could provide additional information to this judgmental process.'' (Docket No. EPA–HQ–OAR–2005–0083–0417, Paragraph 71) Similarly, IAEA suggests that within 10,000 years, ''While it is recognized that considerable uncertainty can exist during this time period, it is still reasonable to attempt to make quantitative estimates of the indicators to be used.'' However, beyond that time, ''While it may be possible to make general predictions about geological conditions, the range of possible biospheric conditions and human behaviour is too wide to allow reliable modeling * * * Such calculations can therefore only be viewed as illustrative and the 'doses' as indicative.'' (''Safety Indicators in Different Time Frames for the Safety Assessment of Underground Radioactive Waste Repositories,'' TECDOC–767, Docket No. EPA–HQ–OAR–2005–0083–0044, pp. 18–19)

[14] France applies a dose standard for the first 10,000 years that ''will be applied for determining the acceptability of the radiological consequences.'' However, at later times, ''the same [25 mrem/yr] limit shall be used *as a reference value.*'' (Basic Safety Rule III.2.f, Section 3.2.1, Docket No. EPA–HQ–OAR–2005–0083–0389, emphasis added) Sweden specifies quantitative analyses to be judged against a numerical standard for the first 1,000 years, but requires examination of ''various possible sequences for the development of the repository's properties, its environment and the biosphere'' after that time. (SSI FS 1998:1, Docket EPA–HQ–OAR–2005–0083–0047) Similarly, Finland applies a dose standard for ''at least several thousands of years,'' but when ''human exposure'' is no longer ''adequately predictable,'' an activity release standard is in place. (YVL 8.4, Docket EPA–HQ–OAR–2005–0083–0392)

protective of public health and comparable to the domestic and international standards NAS suggested that EPA consider, particularly when considering the extended time frames under consideration for this rulemaking. (NAS Report p. 49 and Tables 2–3 and 2–4)

We also find it instructive to consider again the personal Senate testimony of NAS committee chair Robert Fri, as described in Section III.A (''What Dose Limits Will Apply?'') (Docket Nos. EPA–HQ–OAR–2005–0083–0380 and 0402). Mr. Fri noted that simply extending the compliance period in our 2001 rule to 1 million years ''runs the risk of excessive conservatism'' and could place our standard where the ''committee specifically did not want to be.'' He recognized that a higher standard at the time of peak dose would be one way to reduce that conservatism. Mr. Fri did not address the consistency of our proposed dose level with the NAS findings and recommendations; however, he indicated that, in his view, retaining the 15 mrem/yr standard at the time of peak dose would not be consistent with those findings and recommendations if other aspects of our rule remained unchanged (specifically, the choice of receptor). We find this perspective noteworthy, in that it suggests that there are circumstances in which applying 15 mrem/yr throughout the 1 million-year compliance period could result in a standard contrary to the committee's overall goals, which emphasized the use of ''cautious, but reasonable'' assumptions and care in the use of ''pessimistic scenarios and parameter values.'' (NAS Report pp. 100 and 79, respectively)

Further, we do not believe the Court's decision provides direction independent of the NAS Report; rather, the decision requires only that we ensure that our standards are consistent with the NAS committee's findings and recommendations, as required by the EnPA.

In considering appropriate dose standards for periods approaching 1 million years, we also considered the development of our generic standards in 40 CFR part 191. In both our 1985 and 1993 rulemakings establishing those generic standards, we emphasized that the 10,000-year compliance period for both the containment requirements and individual-protection limit would lead to a combination of site characteristics and engineered barriers that would be capable of providing containment and isolation of the waste for these long periods of time. We did not, however, anticipate that such performance could be maintained indefinitely. Our generic technical analyses, in fact, suggested that significant releases and doses to individuals could result at later times, depending on the characteristics of the site in question and the presumed location of the receptor. (See 58 FR 66401, December 20, 1993)

We note that sites whose natural features alone did not provide total containment were not necessarily considered unsuitable, but we recognized that in those instances, the focus would have to be on ''the design of more robust engineered barrier systems capable of significantly impeding radionuclide releases.'' We believe that it is unrealistic to assume that these sites would then exhibit better performance after the failure of those barriers than they would in the initial 10,000-year period. Consequently, we believe that the potential for doses higher than 15 mrem/yr to individuals in the far future has always been implicit in the concept of geologic disposal. Over time, the initial static system consisting of intact waste packages and other engineered barriers in the natural geologic setting gives way to a more dynamic system in which episodic and gradual processes combine to transport radionuclides to the accessible environment. The sequence and timing of barrier failures strongly influence, and introduce considerable uncertainty into, the timing and magnitude of projected doses over the 1 million-year period. The range of projected doses widens considerably as the containment capability of the engineered barriers diminishes. Interpreting the safety of the disposal system for regulatory purposes, in our judgment, involves more than comparison of projected doses to a regulatory standard, and a single standard applicable to the initial static system would not adequately capture the essential nature of a system that will evolve over 1 million years.

In developing our final standards, we have given much attention to guidance from international organizations and examples from specific national programs. In general, we find few similarities in the details of the international approaches that are directly applicable, and no clear basis for comparing the different approaches. At the same time, we did find broad points of similarity in the overall approach to long-term projections, and referred in our proposal to organizations such as IAEA and NEA, as well as specific countries, such as Sweden. The more typical approach internationally is to require compliance with quantitative performance assessment for only a limited period of time (in some cases, less than 10,000 years). Longer-term dose projections may be compared to dose or risk targets or reference levels, but are viewed more as qualitative indicators of performance than as ''accurate predictions of the expected behavior of a geologic repository'' (NAS Report p. 71), to be weighed in conjunction with other qualitative arguments for confidence in the overall safety of the facility. At longer times, the weight given to quantitative projections typically decreases.[15] More detailed discussion of specific international approaches may be found in Section 4 of the Response to Comments document for this final rule (Docket No. EPA–HQ–OAR–2005–0083–0431).

[15] The standard issued by the Swedish Radiation Protection Authority (SSI, formerly the Swedish Radiation Protection Institute) (SSI FS 1998:1, ''Regulations on the Protection of Human Health and the Environment in Connection with the Final Management of Spent Nuclear Fuel and Nuclear Waste,'' Docket EPA–HQ–OAR–2005–0083–0047) includes a numerical standard during the initial period after disposal and adopts a more qualitative approach at later times. Specifically, for the first 1,000 years following closure of a repository, ''the assessment of the repository's protective capability shall be based on quantitative analyses of the impact on human health and the environment.'' (Section 11) Thus, initially the performance projections may be used to make decisions regarding the protectiveness of the disposal system. However, beyond the first thousand years, ''the assessment of the repository's protective capability shall be based on various possible sequences for the development of the repository's properties, its environment and the biosphere.'' (Section 12) Similarly, the Finnish Radiation and Nuclear Safety Authority's (STUK) regulations for ''Long-term Safety of Disposal of Spent Nuclear Fuel'' (YVL 8.4, May 2001, Docket EPA–HQ–OAR–2005–0083–0392) include two primary protection standards. The first is an individual-protection standard of 10 mrem/yr (0.1 mSv/yr), which applies to ''an assessment period that is adequately predictable with respect to assessments of human exposure but that shall be extended to at least several thousands of years.'' (Section 2.2) The second protection standard, which is implied to cover periods beyond the time for which ''human exposure'' is ''adequately predictable,'' is a radionuclide release standard similar to that included in 40 CFR part 191 and applied at WIPP. We also refer readers to the French standard (Basic Safety Rule No. III.2.f, ''Disposal of Radioactive Waste in Deep Geological Formations,'' 1991, Docket No. EPA–HQ–OAR–2005–0083–0389). For the initial period, which is to last ''at least 10,000 years * * * The limit of [25 mrem/yr] will be applied for determining the acceptability of the radiological consequences.'' However, ''[b]eyond this period'' when ''uncertainty concerning the evolution of the repository increases progressively with time * * * Quantified estimates of the individual dose estimates must then be made. These may be supplemented, by more qualitative assessments of the results of these estimates, as regards the geological barrier evolution factors, so as to verify that the release of the radionuclides does not result in an unacceptable individual dose. In this verification, the same [25 mrem/yr] limit shall be used *as a reference value*.'' (Section 3.2.1, emphasis added)

2. What is the Dose Standard for 10,000 Years After Disposal?

Section 801(a)(1) of the EnPA directs us to ''promulgate, by rule, public health and safety standards'' that ''prescribe the maximum annual effective dose equivalent to individual members of the public'' from releases of radioactive material from the Yucca Mountain repository. Promulgation of the standard described in section III.A.1 of this document, which will apply beyond 10,000 years and up to 1 million years, fulfills this statutory direction. Today's final rule also retains the standard promulgated in 2001 as § 197.20, which requires that DOE demonstrate a reasonable expectation that the RMEI will not incur annual doses greater than 15 mrem from releases of radionuclides from the Yucca Mountain disposal system for 10,000 years after disposal. We believe this is an appropriate exercise of our policy discretion, protective of public health and safety, and consistent with our generic standards at 40 CFR part 191 (now applied to the WIPP) and other applications in both our regulations for hazardous materials and internationally for radioactive waste. Further, this dose level is also within the range of risks identified by NAS as consistent with current national and international regulations. (NAS Report p. 49, Tables 2–3 and 2–3) Moreover, the 15 mrem/yr standard for 10,000 years is consistent with EPA's overall risk management policies [16] and serves as a logical foundation for us to incorporate concerns regarding far future projections (such as the specifications regarding seismic, igneous, and climatic events and processes discussed in section III.B of this document).

As we stated in our proposal, an important reason for retaining a standard applicable for the first 10,000 years is to address the possibility, however unlikely, that significant doses could occur within 10,000 years, even if the peak dose occurs significantly later, as NAS believed likely. (NAS Report p. 2) We received some comments suggesting that DOE's estimates of waste package performance are overly optimistic and that significant early package failures are possible, if not to be expected. Some commenters incorrectly argued that we had inappropriately ''ratified'' DOE's projections of waste package performance and our proposal ''would provide essentially no protection for the period before 10,000 years,'' because early failure of a system licensed against a post-10,000-year dose standard in excess of 15 mrem/yr would have greater consequences than would early failure of a system licensed against a 15 mrem/yr standard that applied at all times. We recognize that DOE's estimates of waste package integrity rely heavily on extrapolations of laboratory testing data, which involve significant uncertainties, especially when considering time frames well in excess of all practical experience. It is not possible to claim unequivocally that no information will come to light that might cause a reassessment of the containers' behavior and its effect on disposal system performance. However, while DOE must defend its estimates in licensing, our rulemaking is not dependent on resolution of this issue. DOE will have to demonstrate that there is a reasonable expectation that the dose to the RMEI will not exceed 15 mrem/yr in the first 10,000 years after closure. Thus, the addition of the peak dose standard in no way weakens the protection provided by our 2001 standards, since disposal system performance must still be assessed against the 15 mrem/yr limit during the relevant time period.

In fact, the reverse is true. The peak dose standard adds a new level of public health protection for the post-10,000-year period that was not defined in our 2001 standards. It may in fact be highly unlikely, if not impossible, for projected doses to exceed (or even approach) 15 mrem/yr within the first 10,000 years without also exceeding 100 mrem/yr at some other time during the compliance period (see section III.A.4, ''How Did We Consider Uncertainty and Reasonable Expectation?''). In that case, the peak dose standard of 100 mrem/yr alone would provide the necessary public health protection at all times during the compliance period. The 10,000-year standard would not, then, control projected doses during that period but would instead represent an explicit statement of the level of performance that is required to be achieved by the peak dose standard in that initial period. We believe it is important to structure our regulations to make it clear that the standard of protection at Yucca Mountain would not be less than that provided for WIPP or the Greater Confinement Disposal facility (GCD).[17]

3. How Do Our Standards Protect Public Health and Safety?

The peak dose standard we are establishing today, 1 mSv/yr (100 mrem/yr), will protect public health and safety for the period beyond 10,000 years and up to 1 million years. This standard is consistent with the public dose limit recommended by ICRP and widely adopted internationally and nationally. Section 801(a)(1) of the EnPA directs us to ''promulgate, by rule, public health and safety standards'' that ''prescribe the maximum annual effective dose equivalent to individual members of the public'' from releases of radioactive material from the Yucca Mountain repository. In promulgating these standards, we have given special consideration to the EnPA mandate that our standards be ''based upon and consistent with'' the recommendations of the NAS, which included setting a ''health-based individual standard'' ''that sets a limit on risk to individuals of adverse health effects.'' (NAS Report pp. 65 and 4) We understand this to mean that we should select the standard based, in part, on the level of risk, although NAS declined to recommend such a level. (NAS Report p. 49) We have chosen to express the standard in terms of dose, for the reasons described in our 2001 final rulemaking (66 FR 32085–32086). In that rulemaking, we did consider both the NAS views on risk and EPA policies and precedents in establishing the dose standard. The risk associated with the 15 mrem/yr standard applicable for the initial 10,000-year period is consistent with both the Agency's overall risk management policies and the suggested NAS ''starting point'' (NAS Report p. 49) The nominal annual risk associated with the final peak dose standard of 100 mrem/yr, 5.75×10^{-5}, is comparable to the range of risks represented by domestic and international standards that NAS suggested for EPA to consider.[18] This is a protective level of risk given the extremely long time frames contemplated for this standard, and reasonable in that it effectively addresses the associated uncertainty in projecting doses for up to 1 million years. Given this fact and the broad consensus regarding 100 mrem/yr as a protective public dose limit, EPA finds that the dose standard of 100 mrem/yr, with its associated risk, is protective of the RMEI over the period from 10,000

[16] The annual fatal cancer risk of 15 mrem is 8.6×10^{-6}, based on a conversion factor of 5.75×10^{-4} fatal cancers per rem.

[17] GCD is a group of 120-feet deep boreholes, located within the Nevada Test Site, which contain disposed transuranic wastes.

[18] This document focuses on annual risk rather than lifetime risk because NAS identified annual risk as the appropriate metric, although it did not recommend a particular risk level.

years to 1 million years, as required by the EnPA.

The Agency believes it important to emphasize two aspects of this decision. First, modeling of a complex system such as the Yucca Mountain disposal system over such time frames involves significant uncertainties in both the knowledge of characteristics of the site and the conceptual representation of the processes contributing to release and transport of radionuclides. The NAS recommendation has extended the application of regulatory judgment beyond the period when substantially complete containment might reasonably be provided, and through a period during which complete loss of containment cannot be discounted. The sequence and timing of scenarios resulting in waste package failure are highly dependent on initial assumptions and are the most significant factors in estimating the timing and magnitude of doses to the RMEI. Dose projections involve extrapolation of assumptions, models, and data over time periods much longer than those considered in other regulatory contexts. Such projections therefore cannot be confirmed in the usual sense (i.e., through measurements or monitoring), nor is it expected that long-term maintenance of the repository will be performed. Such considerations lead us to conclude that it would not be realistic to demand that projections from such complex systems be readily distinguishable from one another at the level of incremental risk customarily addressed by the Agency in situations where results can be confirmed, modeling is utilized on a more limited scale, or institutional controls are more applicable.

The Agency's second concern is the correlation of risk with health detriment. NAS specifically framed its recommendation to establish a risk standard in the context of health effects. (NAS Report pp. 4 and 65) In doing so, it explicitly extended the traditional reliance on ''present knowledge'' in the framing of performance assessments to assume that future societies would not have eliminated radiation cancer risks.[19] (NAS Report p. 100) However, the reliance on risk to express the results of long-term safety assessments has been approached more cautiously, and it has primarily been viewed as a mechanism to incorporate the likelihood of scenarios affecting potential exposures, rather than as a direct measure of health impacts or as a firm compliance criterion.[20]

Risk correlations are highly dependent on population characteristics and baseline cancer rates, which change over time with dietary, lifestyle, medical, industrial, environmental, demographic, and other contributing factors. ICRP has expressed caution that ''[d]oses and risks, as measures of health detriment, cannot be forecast with any certainty for periods beyond around several hundreds of years into the future * * * Such estimates must not be regarded as predictions of future health detriment.'' However, ICRP has also suggested that it is not unreasonable for shorter-term assessments to relate dose or risk to health effects: ''To evaluate the performance of waste disposal systems over long time scales, one approach is the consideration of quantitative estimates of dose or risk on the order of 1000 to 10,000 years. This approach focuses on that period when the calculation of doses most directly relates to health detriment * * *'' (ICRP Publication 81, ''Radiation Protection Recommendations as Applied to the Disposal of Long-Lived Radioactive Waste,'' Docket No. EPA–HQ–OAR–2005–0083–0417, Paragraphs 41 and 71, respectively) Thus, the Agency finds that its requirements for the probabilistic calculation of doses effectively incorporates the issue of risk as it has customarily been considered in long-term safety assessments. Further, the Agency believes its decision to view the 10,000-year standard within its traditional risk-management framework is reasonable and consistent with views on shorter-term safety assessments.

The nominal annual risk level for fatal cancer associated with the 100 mrem/yr dose standard is 5.75×10^{-5}. This is comparable to the range of risks represented by national and international regulations identified by NAS for EPA to consider, and is premised on a dose level the NAS has addressed favorably as a matter of international regulatory consensus (NAS Report pp. 40–41, Tables 2–3 and 2–4). Considering that this standard will apply for up to 1 million years, we believe this represents a level of risk that will protect public health and safety in the far future. However, for the reasons described above, we do not believe it is appropriate to view the standard through a strict risk perspective, and caution against doing so. Further, even if the risk correlations could be assumed valid over such times, the nominal risk represented by projected doses may be a reflection of the uncertainties inherent in such projections, and therefore overstated. ICRP states, for example, that ''as the time frame increases, some allowance should be made for assessed dose or risk exceeding the dose or risk constraint * * * This must not be misinterpreted as a reduction in the protection of future generations, and, hence, as a contradiction of the principle of equity of protection, but rather as an adequate consideration of the uncertainties associated with the calculated results.'' (ICRP Publication 81, Docket No. EPA–HQ–OAR–2005–0083–0417, Paragraph 77).

As a result of these considerations, for a standard covering periods up to 1 million years, the Agency believes it is more appropriate to view protectiveness from a broader perspective. This perspective must include consideration of the modeling issues discussed earlier, as well as be cognizant of the regulatory context in which dose projections will be presented. NRC's judgment of ''reasonable expectation'' will not rely on a simple comparison of the mean projected dose with the regulatory standard, but will encompass the data, assumptions, and models underlying those projections, including the sources and treatment of uncertainties and conservatisms. We are also mindful that the post-10,000-year peak dose standard

[19] Dose can be converted to risk by use of either radionuclide-specific or overall conversion factors. The NAS committee referred only to overall conversions (i.e., risk per rem), which is the typical approach applied to dose standards when the specific mix of radionuclides is not well-defined in advance. The committee saw the direct use of risk as an advantage if the relationship should change in the future through new research on low-dose health effects, because the underlying risk could be viewed as representing the level of societal acceptance of health impacts, which the committee saw as less likely to change, whereas dose could become further removed from this level of societal acceptance. (NAS Report p. 64) In fact, we use a conversion factor slightly higher than that cited by the NAS committee (5.75×10^{-4} fatal cancers per rem, compared to the committee's figure of 5×10^{-4} per rem). See 66 FR 32080–32081, for more discussion of health risks from ionizing radiation.

[20] For example, a 2007 NEA document on ''Consideration of Timescales in Post-Closure Safety of Geological Disposal of Radioactive Waste'' (NEA/RWMC/IGSC/(2006)3), which was based on surveys of Member Countries, points out that ''In evaluating compliance with regulatory criteria, or in formulating these criteria, extreme scenarios or parameter distributions can generally be assigned less weight. This is, for example, inherent in criteria expressed in terms of risk.'' (Docket No. EPA–HQ–OAR–2005–0083–0411, p. 38) Similarly, the UK Environment Agency has stated: ''In the 1995 White Paper, the Government stated that reliance cannot be placed exclusively on estimates of risk to determine whether the facility is safe. Whilst such calculations can inform a judgement on the safety of the facility, other technical factors, including some of a more qualitative nature, will also need to be considered. The Government therefore considers it inappropriate to rely on a specified risk limit or risk constraint as an acceptance criterion for a disposal facility after control is withdrawn. It is, however, considered appropriate to apply a risk target in the design process.'' (Guidelines for Authorisation of Disposal Facilities for Low- and Intermediate-Level Radioactive Waste, Docket No. EPA–HQ–OAR–2005–0083–0063, Paragraph 6.14)

covers an extremely wide time window, far beyond that for any previous regulatory situation in this country, and that a peak mean dose could be projected to occur at any point within that time span. Where the precision and predictive capabilities of performance assessment models diminish over such long times, we believe it is appropriate that NRC ''weigh how the scientific basis for analysis changes with time'' in reaching its judgment (NAS Report pp. 30–31).

In that context, the 100 mrem/yr public dose limit recommended by ICRP and widely adopted by national and international organizations and government agencies represents a key element of radiation protection practice that can be applied to the estimation of potential future exposures. It provides a standard for public protection today and, by extension in the far future. This judgment reflects our view that the selected level must take into account larger, less quantifiable factors such as the uncertainties involved in projecting doses over 1 million years and the meaning that can be assigned to such projections (both in terms of their value as predictions of expected behavior of the disposal system and in their correlation with health effects), as well as the relative importance they should assume, in a regulatory context. Having considered these factors, we conclude that the post-10,000-year dose standard of 100 mrem/yr is protective of the RMEI. It must also be emphasized that the 100 mrem/yr level applies to the RMEI, who is described as a person whose location, lifestyle, and characteristics cause that person to be subject to doses at the high end of the local population. As a result, the RMEI is among the most highly exposed members of the public. Most residents in the vicinity of Yucca Mountain would receive much lower doses from the disposal system than the RMEI, if any dose at all.

Taken together, the dual standards provide a reasonable test of the disposal system that appropriately combines protectiveness with recognition of the limitations of modeling in predicting the evolution of that system over hundreds of thousands of years. The 10,000-year standard is solidly grounded in the Agency's risk-management framework and prior practice for geologic disposal facilities. The longer-term peak dose standard is widely-accepted domestically and internationally as protective of public health and safety, reasonable in its recognition of the regulatory context, and fulfills our EnPA mandate by extending to the time of peak dose up to 1 million years. However, the Agency also emphasizes the site-specific nature of this rulemaking, which should not be viewed as a precedent for other regulatory situations, but as a reasoned response to unique circumstances involving issuance of a compliance standard applicable for periods up to 1 million years after disposal.

4. How Did We Consider Uncertainty and Reasonable Expectation?

In establishing our final standards pursuant to the EnPA, we have considered two important statements from the NAS committee: (1) ''We recognize that there are significant uncertainties in the supporting calculations and that the uncertainties increase as the time at which peak risk occurs increases'' and (2) ''No analysis of compliance will ever constitute an absolute proof; the objective instead is a reasonable level of confidence in analyses that indicates whether limits established by the standard will be exceeded.'' (NAS Report pp. 56 and 71, respectively) We have been mindful of these statements, as well as the fact that NAS deferred to our judgment in setting the level of the final compliance standard, as indicating that there are limits to the ability of science to provide definitive answers. ''When all reasonable steps have been taken to reduce technical uncertainty * * * there still remains a residual, unquantifiable uncertainty * * * The only defense against it is to rely on informed judgment.'' (NAS Report p. 80)

We believe we have appropriately considered the NAS views in establishing 1 mSv/yr (100 mrem/yr) as the individual-protection standard for the period beyond 10,000 years and up to 1 million years. In order to approve DOE's license application, NRC must determine, at a minimum, that there is a reasonable expectation that standard will be met (as well as determine compliance with other NRC requirements, such as a multiple-barrier system). The primary indicator of compliance with the individual-protection standard is the mean of the distribution of projected doses presented by DOE (see Section III.A.9 of this document, ''How Will NRC Determine Compliance?''). However, NRC's compliance determination will consist of more than a simple comparison of the mean of projected doses with the dose standard. Rather, as stated in 40 CFR 197.14, NRC will reach its determination ''based upon the full record before it.'' Regardless of whether the mean of projected doses is well below the dose standard or not, NRC will examine the assumptions, data, models, and other aspects of DOE's projections to ensure that it has an understanding of those projections sufficient to reach a ''reasonable expectation'' as to their compliance with the standard (40 CFR 197.13). While applying the principles of reasonable expectation at all times, NRC may also use its judgment as to whether it would apply the concept in exactly the same way for times as long as 1 million years as it would for much shorter times. A key element of reasonable expectation is that it ''accounts for the inherently greater uncertainties in making long-term projections of the performance of the Yucca Mountain disposal system'' (§ 197.14(b)), we would consider it logical as well as practical for NRC, in reaching its compliance decision, to evaluate the sources and effects of uncertainties in DOE's analyses, as well as DOE's treatment of them.[21]

Uncertainties can influence performance assessments in a number of ways. Some sources of uncertainty can be addressed, or at least accounted for, while in other areas our knowledge may be too limited to even characterize the uncertainty, much less explicitly account for it. Sources of uncertainty are often discussed in broad categories such as ''data'' or ''model'' uncertainty, although these can take on various forms within those broader categories that create individual challenges.[22]

NAS supported the use of probabilistic modeling as one way to address the effects of uncertainty. However, NAS noted that this process itself can involve significant uncertainties in defining the parameter value distributions from which the probabilistic selections would be made. (NAS Report pp. 78–79) As a result, interpretation of probabilistic results, which illustrate uncertainty through the distribution of calculated values, may

[21] ICRP Publication 81: ''Demonstration of compliance with the radiological criteria is not as simple as a straightforward comparison of calculated dose or risk with the constraints, but requires a certain latitude of judgement.'' (Docket No. EPA–HQ–OAR–2005–0083–0417, Paragraph 86)

[22] For example, ''data'' uncertainty can cover broad issues such as whether sufficient data are available, whether the right kind of data are available, whether the data are of sufficient quality, and whether the available data adequately capture what NAS referred to as ''the difficulties in spatial interpolation of site characteristics'' which ''will be present at all times'' (NAS Report p. 72). Similarly, ''model'' uncertainty includes not only whether the processes acting on the site have been correctly represented mathematically and coupled with each other, but also whether the basic understanding of which processes operate, whether there are competing mechanisms that must be considered (*e.g.*, for corrosion or ground-water flow), and the extent to which and conditions under which one mechanism is dominant.

also be affected by this underlying uncertainty, which may not be fully appreciated or understood.

Selecting an appropriate dose limit for periods up to 1 million years must also consider the ability of performance assessments, and those who interpret them, to distinguish between differing repository designs, as well as different conceptualizations of total system performance over very long time frames. We have described the general view that the predictive capabilities of performance assessments diminish as the time periods covered by the assessments increase. It is also important to understand that, while mathematical calculations can result in very precise estimates of dose (to multiple significant digits), this precision is misleading in its presentation of the approximate outcomes of multiple interacting processes. We believe it is not appropriate to imply that there is a clear and immutable difference between two projections of dose, when it is understood that neither on its own is an unqualified representation of reality. Such representations may promise more than can be delivered by the model's ability to ''slice it thin.''[23] In our view, it makes little sense to assert that a 15 mrem/yr dose limit for the period within 10,000 years is more ''protective'' than a higher limit much later in time if, in the time frame of hundreds of thousands of years, the uncertainties in projecting disposal system performance cannot easily make distinctions at such incremental levels.[24]

In responding to comments on this issue, we considered how it might be possible to demonstrate the increase in projected uncertainties and provide a quantitative estimate of the degree of increased uncertainty that might be encountered as a result of variation in parameter values. To examine the long-term propagation of uncertainty in dose projections, we used a simplified Yucca Mountain site performance assessment model and constructed a hypothetical disposal system that would produce a mean dose to the RMEI of 15 mrem/yr at 10,000 years. That is, we estimated the number of waste package failures that would be necessary to produce a disposal system operating at the ''edge of compliance'' at 10,000 years. This disposal system, which would still meet the performance standard at 10,000 years, was the reference base case for our uncertainty analyses. The number of ''failed'' waste packages needed to produce the reference case dose (a mean of 15 mrem/yr at 10,000 years) was calculated using the simplified site model and parameters used in the DOE model, and assumed some components of the engineered barrier did not function to provide containment (i.e., the titanium drip shields designed to divert water from the waste packages, as well as other components of the engineered barrier system, were removed from the model).[25] Further, upon ''failure'' of a waste package, the entire inventory of that package was assumed to be available for dissolution and transport, subject to solubility limits applied to each radionuclide.

To assess the progressive effects of uncertainty, the number of ''failed'' packages was limited to the number necessary to produce 15 mrem/yr at 10,000 years, and the hypothetical site model was used to make dose projections from 10,000 years (the reference base case) through the period of peak dose within the period of geologic stability. Thus, the system established as a starting point for the peak dose projections was one in which some degree of release and transport to the RMEI had already taken place within the initial 10,000 years, providing a basis for judging how the continuation of these processes would change the results over time. These analyses examined the effects of uncertainties from the natural barrier portion of the disposal system, since additional waste package failures were not considered.[26] It should be recognized that the base case was determined using probabilistic methods, so the results at 10,000 years already showed some effects of uncertainty, as indicated by the range of projected doses with the mean at 15 mrem/yr.

We found that the uncertainty in dose projections, from the base case (at 10,000 years) to peak dose (as measured by the spread in dose estimates between the 5th and 95th percentiles at these times), increased by approximately two orders of magnitude. These results showed quantitatively that uncertainty in performance projections does increase with time for the Yucca Mountain system, and supports the premise that increasing uncertainty reduces the degree of confidence that can be assumed for very long-term performance assessments. We believe this supports the premise, discussed earlier, that increasing uncertainty in dose projections over very long time periods lessens the ability of performance assessment modeling to meaningfully distinguish among alternative (and equally ''likely'') ''futures'' represented by individual model simulations, and ultimately to distinguish among alternate models and assumptions for site performance assessments. More detail on the site model we used, parameter databases, sensitivity analyses and discussion of the results, is provided in the technical reports describing this work (Docket No. EPA–HQ–OAR–2005–0083–0386).

NRC must reach a determination of compliance based on the specific case presented by DOE. In order to conclude that there is a reasonable expectation that the Yucca Mountain disposal system will comply with our standard of 100 mrem/yr, NRC must understand the technical basis for DOE's projections,

[23] This problem is not specific to quantitative performance assessment. Similar issues have been identified in analysis of different policy options for energy or other areas associated with technological risk. It has been noted that ''The results of individual risk assessment studies are often reported with formidable precision, expressed as discrete numbers (rather than ranges) and presented to two, three and even four significant figures. Yet * * * such precision seems entirely to misrepresent the accuracy of this style of appraisal taken as a whole * * * the problem does not tend to be driven by any single factor in analysis, nor is it a simple matter of some studies being more 'accurate' or 'reasonable' than others in any definitive sense. The manifest variability * * * is rather a simple reflection of * * * the adoption of different (but equally scientifically valid) assumptions and priorities concerning the multitude of different dimensions of risk. Where [different options cannot be clearly distinguished] in any absolute sense, then the value of appraisal lies in exposing the relationships between different assumptions in analysis and the associate pictures of the relative importance of different options. It is better to be *roughly accurate* in this task of mapping the social and methodological context-dependencies than it is to be *precisely wrong* in spurious aspirations to a one-dimensional quantitative expression of technological risk.'' (''On Science and Precaution in the Management of Technological Risk,'' Volume 1, Institute for Prospective Technical Studies, 1999, Docket No. EPA–HQ–OAR–2005–0083–0413, pp 13–16, emphasis in original)

[24] One might compare this situation to finding two proximate, but distinct, locations on a road map. In the first instance, the scale on the map is such that all individual roads and landmarks (e.g., schools, churches, libraries) can be seen. One can easily locate each site and circle it. Now consider a map of the same size, in which the scale is much smaller, showing only major thoroughfares and main local roads. One would still be able to approximate the desired location(s), but any attempt to circle them would likely encompass both (and may be deliberately larger to ensure that both are captured). Thus, the ability to distinguish the two locations hinges on the scale and detail of the map in question. The change in ''scale'' for our rulemaking is the extension of the compliance period to 1 million years.

[25] Although it employed site parameter value distributions used by DOE, the model used in this analysis was simplified and ''forced'' to the boundary condition of a 15 mrem/yr mean dose at 10,000 years. This analysis should in no way be compared to the modeling conducted to support DOE's license application.

[26] We considered release of radionuclides from the waste form as a natural process dependent on solubility parameters. The waste form itself (spent fuel assemblies or vitrified HLW) is often considered part of the engineered barrier system.

including the inherent uncertainties. We believe it is appropriate for NRC to examine uncertainty in its licensing review in order to achieve the necessary level of confidence in DOE's understanding and depiction of the disposal system. Ultimately, in reaching its compliance determination, it is incumbent upon NRC to clearly state what it can or cannot conclude from the performance assessment results, within the limits of science.

5. How Did We Consider Background Radiation In Developing the Peak Dose Standard?

We are not adopting the proposed 3.5 mSv/yr (350 mrem/yr) level as the compliance standard for the period beyond 10,000 years, nor have we adopted the reasoning used to support the proposed standard (i.e., considerations of specific background radiation estimates) to the selection of the 100 mrem/yr level. We received significant comment on this aspect of our proposal, much of it taking issue with the concept of using background radiation as an indicator of ''safe'' levels of exposure from an engineered facility. We also received additional information that provided insights into and refined our consideration of background radiation. For example, commenters referred to monitoring data collected by the Desert Research Institute indicating that the unshielded (outdoor) background radiation from cosmic and terrestrial sources in Amargosa Valley is roughly 110 mrem/yr. Commenters also informed us that roughly 90% of the population in Amargosa Valley lives in mobile homes, which has implications for indoor radon exposures. Other commenters supported the use of a different factor for converting radon concentrations into dose.

In considering these comments, as well as those taking issue with the overall premise described in the proposal, we found the relatively simple approach used in the proposal evolving into a more complex undertaking requiring numerous decisions where science did not provide a definitive answer. Addressing indoor radon estimates presented the greatest challenge, as indoor radon represented the highest proportion of overall background radiation. Complicating factors included multiple ways of calculating radon dose, the prevalence of mobile homes in Amargosa Valley, limited data sets primarily from the early 1990s, and data for individual counties in a different format than state-wide data. We concluded that there was no generally agreed-upon approach in the context of Amargosa Valley for incorporating indoor radon exposures into an analysis of background radiation that would lead to a regulatory standard, particularly given the fact that many commenters viewed the entire concept as arbitrary. Accordingly, we have decided not to adopt a standard derived from an analysis of background radiation estimates at specific locations or the differences between background radiation estimates at different locations.

We continue to believe that references to natural sources of radiation can provide useful insights. IAEA has observed that ''[i]n very long time frames * * * uncertainties could become much larger and calculated doses may exceed the dose constraint. Comparison of the doses with doses from naturally occurring radionuclides may provide a useful indication of the significance of such cases''. (IAEA WS–R–4, Docket No. EPA–HQ–OAR–2005–0083–0383, Paragraph A.8) We note that the 100 mrem/yr level reasonably comports with such an analysis as well. For example, as noted above, 100 mrem/yr is roughly the value reported by the Desert Research Institute for cosmic and terrestrial radiation at Amargosa Valley (unshielded). When shielding from buildings is considered and indoor radon doses are estimated using a more conservative conversion factor suggested by some commenters, 100 mrem/yr is at the low end of overall background radiation estimates in Amargosa Valley and nationally. Within the State of Nevada, the difference in average estimates of background radiation for counties is greater than 100 mrem/yr. (Docket No. EPA–HQ–OAR–2005–0083–0387) As previously stated, this suggests that 100 mrem/yr can be considered to be a level such that the total potential doses incurred by the RMEI from the combination of background radiation and releases from Yucca Mountain will remain below doses incurred by residents of other parts of the country from natural sources alone.[27] It may also be noted that the 100 mrem/yr public dose limit recommended by ICRP is itself related to background radiation, so indirectly our peak dose standard does incorporate the concept of variations in background radiation.[28] However, in the absence of compelling reasons for selecting specific background radiation estimates and points of comparison, we conclude that comparing background radiation estimates from specific locations does not provide a clear or sufficient basis for a regulatory compliance standard applicable to the Yucca Mountain disposal system. Discussion of specific issues raised in public comments is in Section 3 of the Response to Comments document.

6. How Does Our Rule Protect Future Generations?

Because of its long lifetime, high hazard, and potential for misuse, SNF and HLW present special challenges to those charged with protecting the health, safety, and security of the public and the environment. Geologic disposal has long been viewed by policymakers as the management option that best addresses all of these concerns.[29] In the United States, geologic disposal was first endorsed by the NAS in 1957 (''The Disposal of Radioactive Waste on Land'') and established as national policy in the Nuclear Waste Policy Act of 1982.

However, the fact that geologic disposal has potentially significant

[27] It could also be considered consistent with the NEA statement that ''[w]hat can be aimed at, however, is to leave future generations an environment that is protected to a degree acceptable to our own generation. It is also relevant to observe that this level of protection will ensure that any radiological impacts due to disposal will not raise levels of radiation above the range that typically occurs naturally.'' (''The Handling of Timescales in Assessing Post-Closure Safety: Lessons Learnt from the April 2002 Workshop in Paris, France,'' p. 9, Docket No. EPA–HQ–OAR–2005–0083–0046)

[28] ''This natural background may not be harmless * * * but the variations from place to place (excluding the large variations in the dose from radon in dwellings) can hardly be called unacceptable * * * Excluding the very variable exposures to radon, the annual effective dose from natural sources is about 1 mSv, with values at high altitudes above sea level and in some geological areas of at least twice this. On the basis of all these considerations, the Commission recommends an annual limit on effective dose of 1 mSv.'' (ICRP Publication 60, Docket No. EPA–HQ–OAR–2005–0083–0421, Paragraphs 190–191)

[29] In its 1995 Collective Opinion, the NEA Radioactive Waste Management Committee concludes that ''from an ethical standpoint, including long-term safety considerations, our responsibilities to future generations are better discharged by a strategy of final disposal than by reliance on stores which require surveillance, bequeath long-term responsibilities of care, and may in due course be neglected by future societies whose structural stability should not be presumed'' and ''after consideration of the options for achieving the required degree of isolation of such wastes from the biosphere, geological disposal is currently the most favoured strategy,'' whereby ''it is justified, both environmentally and ethically, to continue development of geological repositories for those long-lived radioactive wastes which should be isolated from the biosphere for more than a few hundred years.'' (''The Environmental and Ethical Basis of Geological Disposal of Long-Lived Radioactive Wastes,'' Docket No. EPA–HQ–OAR–2005–0083–0412, pp. 5–6) Similarly, the NAS Board on Radioactive Waste Management stated: ''There is a strong worldwide consensus that the best, safest long-term option for dealing with HLW is geological isolation.'' (''Rethinking High-Level Radioactive Waste Disposal: A Position Statement of the Board on Radioactive Waste Management,'' 1990, Docket No. EPA–HQ–OAR–2005–0083–0420, p. 2)

impacts over times far in excess of recorded human history naturally raises concerns as to how the welfare of people living far in the future can and should be taken into account when societal institutions may no longer exist to provide oversight of a disposal facility.[30]

In considering how our standards reflect these intergenerational issues, we considered the guidance offered by the NAS committee. (See 70 FR 49036) In citing NRC and IAEA sources on the question of intergenerational equity, NAS wrote:

> A health-based risk standard could be specified to apply uniformly over time and generations. Such an approach would be consistent with the principle of intergenerational equity that requires that the risks to future generations be no greater than the risks that would be accepted today. Whether to adopt this *or some other expression of the principle of intergenerational equity* is a matter for social judgment.

NAS Report pp. 56–57, emphasis added.

We generally agree with the NAS statement. A single dose standard applicable at all times would typically be consistent with a close reading of the principle of intergenerational equity as stated by NAS. However, NAS clearly acknowledges that ''some other'' approach could also be consistent with that principle. We believe it is reasonable to conclude that ''some other'' approach must include situations where it may not be reasonable to apply the same dose standard at all times because of the extremely long compliance period. We believe establishing a peak dose standard for the Yucca Mountain disposal system is a situation in which ''some other expression of intergenerational equity'' is more appropriate than is applying a single dose standard of 15 mrem/yr throughout the compliance period. The rulemaking process we are following is the accepted way for ''social judgment'' to be incorporated into regulations.

NAS made no recommendation regarding the appropriate expression of intergenerational equity, just as it made no recommendation regarding the level of the final peak compliance standard. Rather, NAS acknowledged EPA's wide latitude to exercise its policy judgment.

We emphasize that we do not question whether there is an obligation to future generations, but we believe there is no consensus regarding the nature of that obligation, for how long it applies, whether it changes over time, or how it can be discharged. Regarding radioactive waste management and geologic disposal, there is general agreement that assurances can be provided that the protections offered will be similar to those applied to current activities for periods approximating 10,000 years, which is a very long time. It also is generally accepted that engineered barriers cannot be relied upon indefinitely, and that projected doses may eventually exceed the initial regulatory levels. The question of equity is also raised by the fact that the repository is part of a passive disposal system that may provide complete containment for hundreds of generations without their knowledge, but present the greatest risks to equally unsuspecting generations beyond that time. However, it is unclear as to exactly how such long-term projected doses should be factored into a judgment of facility safety, if we are not confident they can be interpreted in the same way at all times.[31] We are establishing today a standard consistent with a public dose limit of 100 mrem/yr that is deemed protective today as a matter of international consensus, which would not affect the quality of life for future generations, even those hundreds of thousands of years distant. We believe this is a reasonable level of commitment for such long times, given the complexities of the situation and what we see as our responsibility to establish a level of compliance, not a soft target or reference level that could be exceeded for unspecified reasons and by unspecified amounts.

In conclusion, EPA acknowledges and remains committed to the principles of intergenerational equity. However, we do not interpret these principles as requiring that the same compliance standard must apply at all times. Such an approach is overly simplistic in the circumstances and ignores the complexities involved in establishing radiological protection standards for periods approaching 1 million years. We believe that peak dose limits over such periods should be viewed as qualitatively different from limits applied at earlier times; in other words, the basis for judgment at different times is not the same. As a matter of public policy, a commitment to protect future generations over the next 10,000 years at levels consistent with standards applied for the current generation, and to protect more distant generations at levels consistent with the overall public dose limits deemed protective today and adopted nationally and internationally, protects public health and the environment across generations in a manner that comports with the objective of intergenerational equity. Under this approach, future generations will not face undue burdens or the irreversible loss of reasonable options arising from a decision by the current generation to pursue a policy of geologic disposal at Yucca Mountain, nor will the compliance demonstration demand more than can be provided by scientific analysis. The standards applicable to both time frames are protective of public health and safety and will offer comparable, if not identical, protections to the affected generations. See section 9 of the Response to Comments document for more detailed discussion of these issues.

7. What is Geologic Stability and Why is it Important?

Underlying the NAS recommendation to assess compliance at the time of maximum risk is the concept of geologic stability (i.e., peak dose should be assessed ''within the limits imposed by the long-term stability of the geologic environment,'' NAS Report p. 2). NAS viewed this as an important consideration in assessing performance, both analytically and in regulatory review. Indeed, NAS discussed two important kinds of uncertainty in describing this concept, which are spatial and temporal uncertainty. The committee concluded that spatial uncertainties will always exist no matter what time frame is used for the performance assessments. Temporal uncertainties, on the other hand, will vary over different time frames, and the presence of such uncertainties indicates the advisability of defining a ''period of geologic stability,'' during which performance projections can be made with some degree of confidence. For time periods where conditions at the site would change dramatically in a relatively short time, projections of site

[30] NEA states: ''The design and implementation of a repository involves balancing of risks and responsibilities between generations. The obligations of the present generation toward the future are complex, involving not only issues of safety and protection but also of freedom of choice and of the accompanying burden of responsibility, and of the need to transfer knowledge and resources. Our capacity to deliver these obligations diminishes with distance in time, which complicates the setting of criteria to be used today in order to demonstrate that obligations to the future will be met.'' NEA–6182, Docket No. EPA–HQ–OAR–2005–0083–0408, p. 25)

[31] NEA–6182: ''National programmes which have already established such criteria have generally found it possible to make cautious, but reasonable assumptions to extend the use of radiological limits already applied to contemporary activities for several thousands of years. The greater challenge lies in setting criteria for very long time frames, extending to a million years and beyond, for which safety analyses must account for high uncertainty and for which the understanding of the needs and impacts on future generations become increasingly speculative.'' (Docket No. EPA–HQ–OAR–2005–0083–0408, pp. 20–21).

conditions would be highly speculative, and consequently performance assessments would have very limited if any validity. It is important to understand that ''stable'' in this context is not synonymous with ''static and unchanging.'' Rather, NAS recognized that many ''physical and geologic processes'' are characteristic of any site and have the potential to affect performance of the disposal system. NAS concluded that these processes could be evaluated as long as ''the geologic system is relatively stable and varies in a boundable manner'' (NAS Report p. 9). Thus, the site itself could be anticipated to change over time, but in relatively narrow ways that can be defined (''bounded''). Implicit in the NAS recommendation is the idea that the maximum risk might occur outside the period of geologic stability, but assessments performed at that time would have little credibility and would not be a legitimate basis for regulatory decisions: ''After the geologic environment has changed, of course, the scientific basis for performance assessment is substantially eroded and little useful information can be developed.'' (NAS Report p. 72)

NAS judged this period of ''long-term stability'' to be ''on the order of one million years.'' (NAS Report p. 2) We describe in section III.A.8 (''Why is the Period of Geologic Stability 1 Million Years?'') the policy judgment on our part to explicitly equate the period of geologic stability with 1 million years. More important, however, is to understand the relationship among the regulatory definition, the physical reality of the site, and the performance assessment models. In reaching its conclusion, NAS considered information available on the site properties and the processes as they currently operate. This provides a basis for understanding how the site functions today, but would not be sufficient to project that understanding for periods of millions of years into the future. To do that, NAS also considered information obtained through studies of the geologic record at the site, to see if evidence existed for times when processes were either fundamentally different or they operated at different rates. This is similar to our recommendation that DOE consider at least the last two million years (the Quaternary period) in characterizing FEPs. In fact, examination of the Quaternary geologic record is an important component in understanding the evolution of the geologic setting over time. NAS expressed confidence that neither the processes active at the site, nor the site itself, had changed in fundamental ways over the Quaternary Period and longer, and probably would continue to behave much as it does today for the next million years. NAS therefore suggested that geologic conditions could be bounded with reasonable confidence for periods ''on the order of one million years.'' (NAS Report p. 2)

Models used to assess performance need to incorporate a description of the bounds under which the model can be considered valid, so as to avoid physically impossible situations, as well as assure that the conceptual models upon which the performance assessments are based reasonably represent the way the site is expected to behave over the period of stability. They must be defined so that significant changes to the properties of the site and physical and geologic processes are not projected inadvertently to create conditions of ''geologic instability.'' That is, they must avoid crossing over into sets of conditions that would in reality not be a geologically stable situation, or are outside the bounds under which the model can be considered valid. Here again the examination of the geologic record at the site provides the means of constructing the models to adequately make simulations of future performance that reflect the range of potential expected conditions at the site over the regulatory compliance period. Parameter value distributions used in the simulations, which are the fundamental input information used to make the dose assessments, should not be limited only to data collected for the present situation at the site, but should consider how those parameter values could change over the period of stability. Expert judgment, where appropriate, based upon site-specific information and broader understanding of how these processes operate in general, plays an important role in defining such modeling input data.

The geologic record is the primary source of information on the question of geologic stability and was considered by NAS in reaching its conclusions about the geologic stability period. We believe that the geologic record at the site clearly supports the position that the site will be stable over the course of the next million years. Conclusions based on extrapolation beyond what can be supported in the geologic record should be avoided.

8. Why is the Period of Geologic Stability 1 Million Years?

Today's final rule includes a compliance period of 1 million years, over which DOE must project performance and demonstrate compliance with the individual-protection and human-intrusion standards. As discussed at length in our proposal and more briefly in Sections I and II of this document, our rulemaking is in response to the DC Circuit decision vacating the 10,000-year compliance period in our 2001 rule. The Court concluded that the 10,000-year compliance period was not based upon and consistent with the NAS recommendations, as the EnPA required. NAS recommended ''that compliance with the standard be assessed at the time of peak risk, whenever it occurs, within the limits imposed by the long-term stability of the geologic environment, which is on the order of one million years.'' (NAS Report p. 2) NAS found that ''compliance assessment is feasible for most physical and geologic aspects of repository performance on the time scale of the long-term stability of the fundamental geologic regime,'' and accordingly ''there is no scientific basis for limiting the time period of an individual-risk standard.'' (NAS Report p. 6) As a matter of policy, we believe it is appropriate and necessary to define a compliance period within which our standards apply. This section discusses the considerations that led us to conclude that a compliance period of 1 million years is appropriate from a policy perspective and consistent with NAS statements regarding geologic stability at Yucca Mountain.

As discussed in section III.A.7 (''What is Geologic Stability and Why is it Important?''), the NAS introduced the concept of geologic stability in its report and referred to it repeatedly in its discussions (NAS Report, e.g., pp. 9, 55, 69, 71, and 72). In discussing the physical properties and geologic processes leading to the transport of radionuclides away from the repository, the NAS committee concluded ''that these physical and geologic processes are sufficiently quantifiable and the related uncertainties sufficiently boundable that the performance can be assessed over time frames during which the geologic system is relatively stable or varies in a boundable manner.'' (NAS Report p. 9) While variation of site characteristics over time produces some uncertainty, NAS believed that such changes could be bounded during the period of geologic stability of the site, i.e., as long as the conditions do not change significantly. (NAS Report pp. 72, 77) NAS also noted that ''[a]fter the geologic environment has changed, of course, the scientific basis for

performance assessment is substantially eroded and little useful information can be developed.'' (NAS Report p. 72) While NAS made no additional qualification on what constituted ''significant'' changes, it made numerous references in its report to a stability period for the site ''on the order of one million years.'' The committee concluded that during this period it would be feasible to make projections of repository site conditions. We concur and believe that assessments can be made and bounded where uncertainty exists, and consequently performance assessments can be developed with adequate confidence for regulatory decision-making within the context of the requirements adopted in today's final rule. We discuss some additional qualifications to this proposition in the remainder of this section.

While the NAS characterized the length of the geologic stability period in loose terms (''on the order of''), we believe it is appropriate to fix the stability period duration as a matter of regulatory policy. We find support on this point from NAS: ''It is important, therefore, that the 'rules' for the compliance assessment be established in advance of the licensing process.'' (NAS Report p. 73). We believe, therefore, as a matter of regulatory philosophy and policy, that a relatively loosely defined stability period ''on the order of'' one million years is not sufficiently specific for regulatory purposes, i.e., implementing our standards and reaching a compliance decision. Indeed, NAS clearly considered that the compliance period could be one of the ''rules'' that should be established for compliance assessments. (NAS Report p. 56) Some commenters suggested that the period of geologic stability could be longer (or interpreted ''on the order of one million years'' as possibly as long as ten million years), and said our rule should allow consideration of longer timescales if justified by considerations of geologic stability. The actual period of geologic stability at Yucca Mountain is unknowable, and we disagree that an open-ended compliance standard is justified over such time frames. We believe that the applicant (DOE) and the compliance decision-maker (NRC) must have definitive markers to judge when compliance is demonstrated, and that a loosely defined time frame does not provide such a marker for implementation of our standards in a licensing process. We believe that the geologic stability period of 1 million years that we have defined provides the necessary marker, and is within our discretion to set as a matter of policy. (See generally NAS Report p. 3) To do otherwise we believe would leave the licensing process in a potentially untenable situation of dealing with possibly endless debate over exactly when a peak dose occurs in relation to a compliance period time limit. Such debate can arise because of the inherent uncertainty that exists in characterizing the complex processes and variables involved in projecting performance of the disposal system over very long periods of time. As the NAS explained, ''although the selection of a time period of applicability has scientific elements, it also has policy aspects we have not addressed.'' (NAS Report p. 56)

As commenters have pointed out, the rate of waste package failure is a dominant factor in determining when the peak dose for a probabilistic assessment will occur. With all the parameters (and the uncertainty in their values over time) involved in a total system performance assessment, as well as the assumptions necessary to select processes involved in projecting performance, it is quite possible that significant debate could result in the licensing process over selection of the parameter values and the resulting timing of the peak dose results. We do not believe such debate is constructive because it would not advance the goal of providing a reasonable test of the disposal system. We also believe that the 1 million year stability period provides the needed definitive marker for judging the time over which the standards apply and is an appropriate exercise of our policy discretion.

Throughout our proposal and in this final rule we have cited a significant number of international references to support policy judgments such as the one discussed here. Readers may recall that we cited such references suggesting that dose projections beyond 1 million years have little credibility and believe that we used those arguments to justify proposing the 1 million-year compliance period (70 FR 49036, August 22, 2005). We did not explicitly discuss in the proposal our reasons for selecting 1 million years as the compliance period and equating it to the period of geologic stability, other than references to the NAS language that it is ''on the order of'' 1 million years. However, these sources do generally reflect widespread acceptance of the proposition that quantitative performance projections at very long time frames have limited utility for regulatory decision-making, and that 1 million years may be a reasonable reference point beyond which such projections either should not be required or should be considered only in their broadest sense.[32] Further, while it should be clear that we agree with the thrust of those international sources regarding the effects of uncertainty on long-term dose projections and the relative level of confidence that can be placed in them for decision-making, we believe the post-10,000-year peak dose standard in today's final rule appropriately accommodates those considerations and is protective of public health, meaningful, implementable, and provides a reasonable test of the disposal system that is consistent with the NAS Report, DC Circuit decision, and the principles of reasonable expectation.

To support these general policy arguments, which would lead us to consider a time period of approximately 1 million years as an appropriate regulatory time frame, it is necessary to address NAS's scientific judgments. While NAS did not define with precision the period of time that the geologic environment likely would remain stable, for purposes of our regulation we believe scientific information can be relied upon to support a firm definition of that period as ending at 1 million years after disposal. Further, we believe that equating a specific time period with the ''period of geologic stability'' is a site-specific decision, as NAS's statements regarding geologic stability were wholly in the context of Yucca Mountain. (See, for example, NAS Report p. 69: ''The time scales of long term geologic

[32] For example, in general guidance documents, the IAEA has stated that ''little credibility can be attached to assessments beyond 10^6 years.'' (''Safety Indicators in Different Time Frames for the Safety Assessment of Underground Radioactive Waste Repositories,'' IAEA–TECDOC–767, p. 19, 1994, Docket No. EPA–HQ–OAR–2005–0083–0044) In its final 2006 Safety Requirements for Geological Disposal of Radioactive Waste, IAEA also states, ''Care needs to be exercised in using the criteria beyond the time where the uncertainties become so large that the criteria may no longer serve as a reasonable basis for decision making.'' (Docket No. EPA–HQ–OAR–2005–0083–0383, page 11, paragraph 2.12) As a country-specific example, final guidelines from the Swedish Radiation Protection Authority state that ''the risk analysis should be extended in time as long as it provides important information about the possibility of improving the protective capability of the repository, although at the longest for a time period of one million years.'' (Docket No. EPA–HQ–OAR–2005–0083–0388) Also, in an example where the official guidelines specify a risk target that is of undefined duration, the United Kingdom's National Radiological Protection Board has stated that ''[o]ne million years is * * * the timescale over which stable geological formations can be expected to remain relatively unchanged,'' while concluding that the scientific basis for risk calculations past one million years is ''highly questionable.'' (''Board Statement on Radiological Protection Objectives for the Land-based Disposal of Solid Radioactive Wastes,'' 1992 Documents of the NRPB, Volume 3, No. 3, p. 15, Docket No. EPA–HQ–OAR–2005–0083–0416)

processes at Yucca Mountain are on the order of 10^6 years''; and NAS Report p. 85: ''The geologic record suggests this time frame is on the order of about 10^6 years.'') Therefore, we have considered how the natural processes and characteristics at the Yucca Mountain site would support defining the period of geologic stability as ending at a specified time after disposal. In considering the natural setting, many comments expressed the view that the site's natural characteristics are so conducive to rapid release and transport of radionuclides, only the waste packages and other engineered barriers would make it possible for significant doses to be delayed much beyond 10,000 years. We believe it is therefore also appropriate to consider the geologic stability period from the perspective of a reasonable length of time for significant events to act on the waste packages and engineered barriers, and ultimately lead to release of radionuclides. Natural processes and events would contribute to both the package failures and to the subsequent transport of radionuclides, even if such failures occur relatively late in the period under consideration.

A consideration of the geologic history of the site, in the areas of igneous and seismic activity, also supports a 1 million year stability period. Information compiled by NRC (Docket No. EPA–HQ–OAR–2005–0083–0373) concerning basaltic igneous activity around the site shows that this type of activity has been the only activity around the site through the Pliocene (beginning roughly 5.4 million years ago), and that the volume of eruptive activity (both tuff and basaltic material) has decreased continually over the last 10 million years (Coleman *et al.*, 2004, Docket No. EPA–HQ–OAR–2005–0083–0378). From the identification of surface features as well as indicators of buried remnants of past volcanic activity, the episodes of basaltic activity around the site can be shown to have occurred in clusters of events around 1 million and 4 million years ago (Hill, 2004, Docket No. EPA–HQ–OAR–2005–0083–0373). The occurrence of these clusters indicates that the nature and extent of past volcanic activity can be reasonably well characterized and that annual probabilities for such events can be reasonably estimated from the geologic record around the site. Annual probabilities of volcanic disruptions to the repository have been estimated by various investigators, and range from as high as 10^{-6} to as low as 5.4×10^{-10} (Coleman *et al.*, 2004, Docket No. EPA–HQ–OAR–2005–0083–0378).

Further, while geologic stability may be viewed as being affected primarily by large-scale events, accumulations of small-scale changes over very long time periods also have the potential to alter the geologic setting and affect the technical basis for performance assessments. Tectonic events have such a potential at Yucca Mountain. Rates of displacement on the nearest potentially significant fault in the region average about 0.02 mm/yr. (DOE, Science & Engineering Report, 2002, p. 4–409, Docket No. EPA–HQ–OAR–2005–0083–0069) This means that in 10,000 years, there could be 20 cm (0.65 ft) of displacement, a relatively small change not likely to affect performance of the geologic system. However, in 1 million years, the same rate of movement results in 20 m (65 ft) of displacement on the fault. Using the larger estimates of movement within the range of potential movement, displacement could be as much as 30 m (100 ft) over 1 million years. Such changes in the geologic setting at Yucca Mountain have the potential to erode the scientific basis for performance assessment and possibly to affect the quality of the information the assessment can provide to decision-makers.

NAS also stated that ''we see no technical basis for limiting the period of concern to a period that is short compared to the time of peak risk or the anticipated travel time.'' (NAS Report p. 56) This statement suggests that the stability period must be long enough to allow FEPs that pass the probability and significance screens to demonstrate their effects, if any, on the results of the performance assessments, even from waste package failures occurring relatively late in the period. In contrast to the accumulated small-scale changes discussed above, larger-scale seismic events are more likely to contribute directly to radionuclide releases through the effects of ground motion. Strong seismic events could damage waste package integrity by causing emplacement drift collapse or vigorous shaking of the packages themselves. Earthquake recurrence intervals for the site indicate that strong events could reasonably be assumed to test waste package integrity at various times within the 1 million-year period (Docket No. EPA–HQ–OAR–2005–0083–0374 and 0379). In addition, we note that estimates of ground water travel time from the repository to the RMEI location are on the order of thousands of years (see the BID for the 2001 final rule, Docket No. EPA–HQ–OAR–2005–0083–0050). At these rates, the effects of disruptive volcanic and seismic effects on releases would not be delayed from reaching the RMEI location during the stability period, e.g., added releases from a low probability seismic event at 800,000 years would have ample time to be captured by the performance assessments. Based on these considerations, the 1 million-year period is a sufficiently long time frame to evaluate the potential consequences of both gradual processes and disruptive events on disposal system performance.

In summary, for regulatory policy as well as site-specific scientific considerations, we believe that fixing the period of geologic stability for compliance assessments at 1 million years provides a reasonable test for the disposal system performance. We believe a fixed time period is necessary both to provide a definitive marker for compliance decision-making and to prevent unbounded speculation surrounding the factors affecting engineered barrier performance and the ultimate timing of peak dose projections. Examination of site characteristics indicates that the influences of natural processes and events on release and transport of radionuclides would be demonstrated even for waste package failures occurring relatively late in the period. We believe that setting a 1 million year limit is a cautious but reasonable approach consistent with the NAS position on bounding performance assessments for uncertain elements affecting disposal system performance. Finally, explicitly defining the period during which our standards apply will focus attention on times for which the geologic setting and associated processes are more quantifiable and boundable, rather than entering debate on disposal system performance in time periods where the fundamental geologic regime may have sufficiently changed so that the ''scientific basis for performance assessment is substantially eroded and little useful information can be developed.'' (NAS Report p. 72)

9. How Will NRC Judge Compliance?

Today's final rule directs NRC to use the arithmetic mean of the distribution of projected doses to determine compliance with both the 150 μSv/yr (15 mrem/yr) dose standard applicable for the first 10,000 years after closure and the 1 mSv/yr (100 mrem/yr) peak dose standard applicable between 10,000 and 1 million years after closure. In reaching this decision, we considered comments raising legal, technical, and policy points. Foremost among these were comments focusing on a statement by the NAS committee: ''We

recommend that the mean values of calculations be the basis for comparison with our recommended standards.'' (NAS Report p. 123)

After considering public comments, the NAS Report, and the DC Circuit decision, we conclude that the use of the arithmetic mean to determine compliance at all times, without conditions or restrictions, is straightforward and clearly consistent with the NAS recommendation, pursuant to the EnPA. Consistent with our proposal, we are specifying that the ''mean'' to be used is the arithmetic mean, as this is consistent with the intent of 40 CFR part 191 and its implementation at WIPP. See section 7 of the Response to Comments document for more discussion of the points raised in public comments.

10. How Will DOE Calculate the Dose?

Today's final rule requires DOE to calculate the annual committed effective dose equivalent (CEDE) for comparison to the storage, individual-protection, and human-intrusion standards using the radiation- and organ-weighting factors in ICRP Publication 60 (''1990 Recommendations of the ICRP''), rather than those in ICRP Publication 26 (''1977 Recommendations of the ICRP''). As we described in our proposal, this action will incorporate updated scientific factors necessary for the calculation, but will not change the underlying methodology. We explained in some detail the use of the terms ''effective dose equivalent'' and ''effective dose'' in the EnPA, the DC Circuit decision, the ICRP publications, and our previous actions to support our position that use of the weighting factors in ICRP 60 (and its follow-on implementing Publication 72) is consistent with calculation of effective dose equivalent, as required by the EnPA. (70 FR 49046–49047)

We received some comment disagreeing with our conclusion that use of the term ''effective dose equivalent'' is consistent with the use of the ICRP 60 weighting factors. As we discussed in our proposal, we believe a close reading of ICRP 60 supports our interpretation that effective dose equivalent and effective dose are synonymous concepts. ICRP defined two weighting factors in ICRP 26, the radiation quality factor, Q, and the tissue weighting factor, W_T. In ICRP 60, the quality factor was replaced by the radiation weighting factor, W_R, with the same values assigned to alpha, beta, and gamma radiation. In ICRP 26, the tissue weighting factor was presented as a rigid construct with defined values for specific organs. In ICRP 60, the tissue weighting factor was redefined as a set of recommended values for an expanded set of organs (which could be modified in cases where scientific information was available to support using alternative factors), and it was explained that the attributes of the tissue weighting factor include the components of detriment cited by the comments (fatal and non-fatal cancers, length of life lost, and hereditary effects). However, ICRP made a clear distinction between its renaming of the doubly weighted dose quantity from ''effective dose equivalent'' (ede) to ''effective dose'' (E) and its redefining of W_T. The association of effective dose equivalent with the ICRP 26 tissue weighting factors is thus coincidental but not required. We cited ICRP to that effect in our proposal:

> The weighted equivalent dose (a doubly weighted absorbed dose) has previously been called the effective dose equivalent but this name is unnecessarily cumbersome, especially in more complex combinations such as collective committed effective dose equivalent. The Commission has now decided to use the simpler name effective dose, *E*. The introduction of the name effective dose is associated with the change to equivalent dose, *but has no connection with changes in the number or magnitude of the tissue weighting factors* * * *

ICRP Publication 60, p. 7, paragraph 27, Docket No. EPA–HQ–OAR–2005–0083–0421, emphasis added.

Similarly, ICRP also states:

> The values of both the radiation and tissue weighting factors depend on our current knowledge of radiobiology *and may change from time to time*. Indeed, new values are adopted in these recommendations * * *. It is appropriate to treat as additive the weighted quantities used by the Commission but assessed at different times, despite the use of different values of weighting factors. The Commission does not recommend that any attempt be made to correct earlier values. *It is also appropriate to add values of dose equivalent to equivalent dose and values of effective dose equivalent to effective dose without any adjustments.*

ICRP Publication 60, p. 9, paragraph 31, Docket No. EPA–HQ–OAR–2005–0083–0421, emphases added.

In summary, we believe the intent of Congress in specifying effective dose equivalent is that the Yucca Mountain standards be based on a doubly weighted dose quantity, not that the assessment of that quantity be tied to factors developed at a particular time, when newer science indicates those factors should be updated. We use effective dose equivalent for consistency with the terminology used in the EnPA, but are adopting in today's final rule the current recommended values for W_T. Our approach is thus fully consistent with both the current ICRP recommendations and the EnPA.

Today's final rule does incorporate a change to the proposed definition of ''effective dose equivalent'' in § 197.2 to make it consistent with language in Appendix A regarding the potential use of future ICRP recommendations. We received some comments suggesting that the appendix should not include specific weighting factors, but state only that doses are to be calculated in accordance with the methods of ICRP 60/72. The commenter believes this is appropriate because NRC's proposed licensing requirements included the tissue weighting factors, but not the radiation weighting factors. Further, the commenter points out that dose coefficients in ICRP 72 (and Federal Guidance Report 13) consider a somewhat different set of organs than do the tissue weighting factors. We prefer not to adopt the commenter's suggestion, which we believe could lead to questions regarding the appropriate factors to use. We note that ICRP 60, unlike ICRP 26, is not tied to a specific set of weighting factors, and allows for the possibility that users will substitute their own preferred set of factors. Stating only that the methods of ICRP 60/72 be used to calculate dose, without the additional stipulations in the appendix, would not provide sufficient clarity on this point. Therefore, we are adding language to the definition in § 197.2 to the effect that NRC can direct that other weighting factors be used to calculate dose, consistent with the conditions presented in Appendix A. We believe this will effectively address the commenter's concern.

B. How Will This Final Rule Affect DOE's Performance Assessments?

Today's final rule requires DOE to demonstrate compliance with the individual-protection standard through use of performance assessment. A performance assessment is developed by first compiling lists of features (characteristics of the disposal system, including both natural and engineered barriers), events (discrete and episodic occurrences at the site), and processes (continuing activity, gradual or more rapid, and which may occur over intervals of time) anticipated to be active during the compliance period of the disposal system. These items are collectively referred to as ''FEPs'' (features, events, and processes). Once FEPs are identified, they are evaluated for their probability of occurrence (i.e., how likely they are to occur during the compliance period) and their effect on the results of the performance assessment (i.e., do they significantly

affect projected doses from the disposal system during the first 10,000 years after disposal). Addressing these aspects of performance assessment for a compliance period of 1 million years was a central aspect of our proposal and is the focus of this section.

After considering public comments, we are retaining § 197.36 as proposed, with two modifications. First, the probability threshold for FEPs to be considered for inclusion in performance assessments conducted to show compliance with § 197.20(a)(1) is now stated as an annual probability of 1 in 100 million (10^{-8} per year).[33] Because the same FEPs included in these performance assessments will also be included in performance assessments conducted to show compliance with § 197.20(a)(2), the same probability threshold applies in all cases. Second, we are adding a provision to address a potential effect of seismicity on hydrology that was identified by NAS. The final rule now requires the potential effects of a rise in the ground-water table as a result of seismicity to be considered. If NRC determines such effects to be significant to the results of the performance assessment, it shall specify the extent of the rise for DOE to assess.

Our 2001 rule set forth three basic criteria for evaluating FEPs for their potential effects on site performance and their incorporation into the scenarios used for compliance performance assessments (§ 197.36). These criteria retained the same limitations originally established in 40 CFR part 191, which were developed to apply to any potential repository for spent nuclear fuel, high-level waste, or transuranic radioactive waste. We believe that approach remains reasonable for the site-specific Yucca Mountain standards, and we believe it is desirable to maintain consistency between the two regulations for geologic repositories in the basic criteria for evaluating FEPs. The criteria for evaluating FEPs are:

- A probability threshold below which FEPs are considered ''very unlikely'' and need not be included in performance assessments;
- A provision allowing FEPs above the probability threshold to be excluded from the analyses if they would not significantly change the results of performance assessments; and
- An additional stipulation that in addition to ''very unlikely'' FEPs, ''unlikely'' FEPs need not be considered in performance assessments conducted to show compliance with the human-intrusion and ground-water protection standards.

As an initial step, a wide-ranging set of FEPs that potentially could affect disposal system performance is identified. The term ''potentially'' is key here, because at this early stage, the list is deliberately broad, focusing more on ''what could happen'' rather than ''what is likely to happen at Yucca Mountain.'' Under the 2001 rule, each of these FEPs is then examined to determine whether it should be included in an assessment of disposal system performance over a 10,000-year period by evaluating the probability of occurrence at Yucca Mountain and, as appropriate, the effects of the FEP on the results of the performance assessment. Based on these evaluations, a FEP may be excluded from the assessment of disposal system performance on the basis of probability, or if the results of the performance assessments would not be changed significantly by its exclusion.

We included in our proposal provisions describing how FEPs should be incorporated into assessments of disposal system performance during the period of geologic stability, defined as ending at 1 million years after closure. Our purpose was to build upon the provisions applicable to the 10,000-year compliance period in our 2001 rule to address the complexities introduced by extending the compliance period to 1 million years. In general, the database of FEPs applicable to Yucca Mountain should be the same, regardless of the period covered by the assessments. In developing our proposal, however, we considered how these general provisions might change when the compliance period extends to 1 million years. We also proposed specific provisions to address climate change, seismicity, and igneous events, which were identified by NAS as potential ''modifiers'' whose effects could be bounded within the period of geologic stability.

Some commenters questioned whether our authority to establish public health protection standards for Yucca Mountain extended to specifying how FEPs must be considered, contending that this function properly lies with the implementing authority (NRC). We disagree. While NRC clearly has authority to specify such provisions, it is also within our purview to stipulate such conditions as are necessary to place our regulations in context and ensure they are implemented as we intended. For analyses covering 1 million years, it is important to focus on those factors most affecting performance, if necessary by excluding other aspects that are more likely to have little or no significance. We believe this approach is consistent with the direction from NAS. NAS was charged with providing advice to EPA on ''reasonable standards for protection of public health and safety'' (EnPA section 801(a)(2)). NAS provided its findings and recommendations in the context of standards to be developed by EPA, including discussion of FEPs, for example: ''the radiological health risk from volcanism can and should be subject to the overall health risk standard to be required for a repository at Yucca Mountain.'' (NAS Report p. 95) Further, NAS discussed the question of uncertainty in quantifying physical and chemical processes and their operation over long time periods and the inevitability of ''residual, unquantifiable uncertainty,'' stating ''[t]he only defense against it is to rely on informed judgment.'' (NAS Report p. 80) Therefore, we believe it appropriate to specify, where necessary, additional provisions for the treatment of FEPs in disposal system assessments to avoid boundless speculation. We have explained our understanding of the proper use of bounding performance scenarios, and we believe we are consistent with the NAS on this point. Bounding assessments addressing uncertainty in understanding the long-term behavior of the site should be constructed using informed judgment, not speculative assumptions without credible supporting evidence.

Two of the criteria for evaluating FEPs, probability and significance of the impacts on performance assessments, are of primary importance in considering how the provisions applicable to the 10,000-year period might change when the compliance period is extended to 1 million years. In the proposed rule, we concluded that the 10,000-year FEPs screening could serve as an adequate basis for longer-term assessments because it is sufficiently inclusive to be appropriate for the entire 1 million-year compliance period, while at the same time reasonably bounding the scenarios that must be considered over the longer time frame. We thought our statements in the preamble on this point were sufficiently clear, but we understand that the way we structured § 197.36 of the proposal, essentially separating the two time periods, may have caused some confusion. For example, we did not intend to indicate or imply that the

[33] Only FEPs with an annual probability greater than or equal to 10^{-5} need to be considered in performance assessments to show compliance with §§ 197.25(b) and 197.30. FEPs below this probability threshold, but still above 10^{-8} per year, are defined by NRC as ''unlikely''.

post-closure performance assessments would consist of two separate and dramatically different calculations, with each having distinctly different scenario construction, parameter value distributions, or other attributes. Regardless of the standard against which compliance is being judged, the probability of occurrence and the significance of the impacts on performance assessment are the two primary criteria for including a FEP in the compliance analysis. The screening for FEPs is done for the 10,000-year performance assessment and then used with certain additions set forth in the rule for the 1 million-year peak dose performance assessment. The initial screening provides a database of FEPs, which is then used for both the 10,000-year and post-10,000-year peak dose analyses, with some additional stipulations for the period beyond 10,000 years. The discussion that follows addresses each of these screening criteria in turn.

Probability

In the proposed standards, we defined the probability threshold for ''very unlikely'' FEPs as a 1 in 10,000 chance of occurrence within 10,000 years, or roughly a 1 in 100 million (10^{-8}) chance per year of occurring. In today's final rule, the probability threshold is now stated only as an annual probability of 1 in 100 million (10^{-8}). We believe it is appropriate to clarify that FEPs have associated probabilities of occurrence that generally do not change over time. That is, the database of FEPs deemed sufficiently probable would serve equally well as the basis for assessments covering 1,000, 10,000, 100,000, or 1 million years. These probabilities of occurrence are established by examining the geologic record and considering potential mechanisms for components of the repository and its natural setting to undergo changes. FEPs with a probability of occurrence greater than 1 chance in 100 million per year should be considered for inclusion in the performance assessments to show compliance with the 10,000-year individual-protection standard, and the same FEPs included in those assessments should be used to develop the performance assessment scenarios to be analyzed for the peak dose performance assessments between 10,000 and 1 million years. We believe that this is an inclusive threshold level that fully considers a range of low-probability FEPs, while at the same time limiting speculation over highly improbable FEPs. We believe the probability screening threshold provides the foundation for a reasonable test of the disposal system, as discussed further below.

Although we discussed the meaning of the probability threshold in some detail in our proposal, we emphasize it again as the foundation for constructing the performance assessment. A 1 in 100 million annual probability of occurrence, when considered over a 10,000-year period, includes FEPs with a cumulative chance of occurring of one one-hundredth of one percent (0.01%). Similarly, over 1 million years, the cumulative probability increases to only a one percent (1%) chance of occurrence within that time frame. We believe that the database of information necessary to assess FEPs at this low probability is the same as that necessary for examining their importance over the entire 1 million-year compliance period. We believe this probability criterion leads to an inclusive set of potential FEPs for both the 10,000-year and peak dose assessments, and in our view would support a reasonable test of the disposal system that encompasses the climate change, seismic, igneous, and corrosion scenarios specified in our proposal.

In our proposed rule, we concluded that the 10,000-year FEPs screening could serve as an adequate basis for longer-term assessments because it is sufficiently inclusive to be appropriate for use in developing performance scenarios applicable to the entire 1 million-year compliance period. That is, we did not propose to require DOE to consider FEPs with an annual probability lower than 10^{-8} to accommodate the lengthened compliance period. We believe excluding FEPs with less than a 1% chance of occurrence in 1 million years is consistent with the principles of reasonable expectation. We believe that lowering the annual probability level below 10^{-8} would allow for speculative scenarios to be considered in the peak dose performance assessment, which would be neither reasonable nor justifiable, as explained below.

Some commenters disagreed, stating that, because we are extending the compliance period by a factor of 100, the probability threshold for excluding FEPs should also be extended by a factor of 100, resulting in a threshold of 1 chance in 10 billion of occurrence per year. Similarly, we received some comments questioning altogether the need for or validity of a probability threshold. The comments suggest that, because the effects are weighted by the probability of occurrence, any potential FEP, no matter how unlikely, should be characterized and assessed because its influence will be mitigated by its low probability. They cite NAS to the effect that ''all these scenarios need to be quantified'' with respect to probability and consequence. (NAS Report p. 72) Therefore, the commenters conclude that our concerns about introducing excessive speculation are unfounded. We disagree. We addressed this topic in our proposal, in the expectation that we would be encouraged to adjust the probability threshold by two orders of magnitude (i.e., widening the probability range by a factor of 100) to account for the similarly lengthened compliance period. We believe that simply extending the approach of using a one in 10,000 probability over a 1 million-year period to give 1 in 10 billion chance per year of occurring (10^{-10}) would result in the inclusion of FEPs that are so speculative as to be unreasonable (70 FR 49052). Nor do we believe it would be consistent with NAS's view that the overall goal was ''to define a standard that specifies a high level of protection but that does not rule out an adequately sited and well-designed repository because of highly improbable events.'' (NAS Report p. 28) Further, NAS itself suggested situations in which scenarios need not be quantified. NAS discusses, in the context of volcanism, a 10^{-8} annual probability of occurrence as a level that ''might be sufficiently low to constitute a negligible risk'' below which ''it might not be necessary to consider'' how the event might contribute to releases from the disposal system. (NAS Report p. 95) We believe this example is instructive, given that volcanism is the single scenario resulting in direct release of radioactive material from the repository into the biosphere, resulting in relatively immediate exposures. We believe it is reasonable to extend the concept expressed by NAS as ''negligible risk'' to FEPs whose influences are seen in the gradual release and transport of radionuclides over long periods of time. Therefore, we believe that lowering the probability threshold, or eliminating it altogether, would be inconsistent with the important NAS cautions to focus assessment efforts on FEPs that can be bounded within the limits of geologic stability.

In our view, were we to lower or eliminate the probability threshold, it would be necessary to consider and describe FEPs that might have been present or occurred only the initial years of the planet's existence. Similarly, FEPs with an annual probability of 10^{-10} may be only hypothetical, since the age of the Earth is generally considered to be ''only'' 4.6

$\times 10^9$ years, suggesting that these FEPs may have less than a 50% chance of occurring within the entire history of the Earth. Indeed, the volcanic rocks comprising Yucca Mountain and its surroundings are only on the order of 10–12 million years old (~10^7 years). In determining the probability of particular FEPs, the geologic record at the site is the source of information to identify what FEPs have occurred at the site in the past and may occur in the future (through the period of geologic stability). Since the host rock formations at the site are only about 10 million years old, an annual probability cut-off of 10^{-10} would mean that probability estimates for some FEPs would have to be made in spite of the fact that there is no evidence for their occurrence at the site in the past. As it is, the 10^{-8} probability threshold presents a significant challenge to characterize FEPs with some degree of confidence, given the limits of today's science and technology. ICRP makes a similar point in its 2007 recommendations: ''The use of probability assessment is limited by the extent that unlikely events can be forecast. In circumstances where accidents can occur as a result of a wide spectrum of initiating events, caution should be exercised over any estimate of overall probabilities because of the serious uncertainty of predicting the existence of all the unlikely initiating events.'' (Publication 103, Docket No. EPA–HQ–OAR–2005–0083–0423, paragraph 269) (Note that this discussion is in the context of ''potential'' exposures, which include releases that may occur in the far future from disposal facilities. Therefore, the term ''accidents'' should not be taken as limited to operational activities.) Overall, we believe events with a lower annual probability than 10^{-8} would introduce speculation beyond what is appropriate to define a reasonable test of disposal system performance.

We also received comments stating that maintaining the probability screening criteria for the extended compliance period undermines our arguments for increasing uncertainty. To the contrary, we believe the physical meaning of the probability threshold (0.01% chance of occurrence within 10,000 years, but a 1% chance within 1 million years) appropriately incorporates the concept of uncertainty increasing with time, while still applying a substantially conservative screening criterion.

We believe that the guidance we have provided for executing a FEPs evaluation and screening process assures that it is executed in a thorough manner. For example, we have stated that the geologic record through the Quaternary Period (a period extending back approximately 2 million years from today) at and around the site should be examined to identify relevant FEPs. While we believe that the Quaternary Period offers the most reliable data for identifying and characterizing site geologic FEPs, we do not believe that evidence preserved in older portions of the geologic record should be ignored in the FEPs identification process. We did not mean to imply that DOE need only consider the previous 10,000 years when developing evidence for the probability of occurrence of future events. Rather, our statements regarding the Quaternary Period as an appropriate geologic record were intended to confirm that, where available, reliable geologic records for earlier time periods should be consulted. For example, determining the probability of seismic and igneous events would make use of the geologic record at the site for as far back in time as reliable estimates of past events can be made so that defensible probability estimates can be made. We believe the Quaternary Period offers the best information to quantify the probabilities and consequences of geologic FEPs relevant to site performance. However, we did not intend that significant information about FEPs be ignored simply because that information appears in the geologic record at the site prior to the Quaternary Period.

In fact, a longer portion of the geologic record has been examined by DOE and NRC in developing FEP probabilities. For example, to determine the nature and frequency of volcanic activity around Yucca Mountain, volcanic activity around the site through the Quaternary Period was extensively examined, as well as volcanic activity prior to that time (ACNW Workshop on Volcanism at Yucca Mountain, September 22, 2004—Docket No. EPA–HQ–OAR–2005–0083–0373 and 0378). We believe that the information necessary to evaluate FEPs against the probability threshold we established (10^{-8} annual probability) will be extensive, and that increasing the compliance period from 10,000 to 1 million years does not require that additional studies be performed beyond those necessary to derive the FEPs probabilities under the screening process done for the 10,000-year time frame assessments. As we have noted previously, the probabilities for individual FEPs are determined once, and the same probabilities are used in both the 10,000-year and 1 million-year assessments.

On this last point, we stress that the revised § 197.36(a) issued today should not be interpreted as compelling DOE to extend the databases for its technical justifications. We are restating the probability screening criterion, not recasting the entire framework for the analysis. We recognize that in any licensing process the burden of proof is on the applicant to demonstrate that the necessary factors and influences have been evaluated. It must also be recognized that there will always be limits to the ability of science and technology to characterize FEPs and their effects on the disposal system. However, NAS has stated that many of these processes and their uncertainties are boundable. In our judgment, given the capabilities of today's science and technology, it would be contrary to the principle of reasonable expectation to require DOE to demonstrate the same level of confidence in assessments covering 1 million years as it would for a much shorter 10,000-year analysis.

Similarly, we believe that this clarification does not create the prospect of speculative scenarios of very low probability (from combinations of FEPs) being proposed, thereby opening the performance assessments to unbounded speculation. For example, if two low probability independent FEPs were proposed to occur simultaneously because of the longer time horizon under consideration, the probability of that combination would be the product of their respective probabilities. In other words, the probability of the combined FEPs occurring during the same year will be much lower, by possibly orders of magnitude, than the probability of either FEP occurring individually. Therefore, since the contributions of various FEPs (or scenarios) to the dose assessments is the product of their respective probabilities and consequences, the consequence of the combined FEPs would need to be inversely proportionally higher, typically by orders of magnitude, than the combined consequences of the individual FEPs considered separately, in order to make a significant change in the overall dose assessment.

We did receive some comment suggesting that we had inappropriately excluded the type of volcanic events that created the Yucca Mountain tuff some 12 to 14 million years ago, instead focusing on the past several million years. However, as we stated in our proposal, the geologic record of the past several million years in the area around the site indicates that basaltic volcanism is the type of volcanism that has occurred recently and has the potential to recur in the future. The earlier events

were of a much different, cataclysmic nature, producing rock units more than 6000 ft (1800 m) thick. The type of volcanic activity that created Yucca Mountain and the surrounding area has not recurred over the approximately 10 million years since the deposits were originally laid down and is extremely unlikely to occur within the next 1 million years (Docket No. EPA–HQ–OAR–2005–0083–0050, pp. 7–42 through 7–49). Further, we question whether such cataclysmic events could be reasonably considered to fall within the bounds of geologic stability as envisioned by NAS. Inclusion of such events in the peak dose assessment up to 1 million years would be inconsistent with the intent of the NAS when it noted that long-term performance can be assessed (because physical and geologic processes are sufficiently quantifiable, and the related uncertainties sufficiently boundable) when the geologic system is relatively stable or varies in a boundable manner. (NAS Report p. 9) However, NAS noted that ''[a]fter the geologic environment has changed, of course, the scientific basis for performance assessment is substantially eroded and little useful information can be developed.'' (NAS Report p. 72) We believe that volcanism of that magnitude would result in fundamental change of the geologic environment and would not represent a reasonable test of the disposal system. Therefore, we continue to see no basis for requiring this type of event be included in the performance assessment.

Some may view our approach using a single probability threshold for determining which FEPs should be considered for inclusion in the performance assessments as inconsistent with the application of different dose standards for the initial 10,000 years and the period up to 1 million years. We do not see an inconsistency primarily because the nature and effects of uncertainty on event probability and dose projections are dissimilar. The overall uncertainty in projecting doses using a model simulating the complex interplay of the disposal system components over long times, each of which has inherent uncertainties in their characteristics, and the associated difficulty in relying on such projections for regulatory decisions, should not be confused with the uncertainty implied in assigning a probability of occurrence to a particular FEP, which in many cases derives from an examination of the geologic record at the site. We have noted the difficulty in extrapolating performance to very long times, and believe it is appropriate to address this difficulty by establishing a somewhat higher, but still protective, dose limit for the period beyond 10,000 years. FEP probabilities are assigned based on observations that may cover long periods of time, such as for geologic processes, or from laboratory testing and the extrapolation of such results to conditions that may exist in the distant future, such as for corrosion processes. In today's final rule, the FEP probability threshold that must be considered in developing performance assessments represents a policy judgment about how such events should be addressed in order to meet the regulatory challenge recognized by NAS, supported by technical reasoning about the nature of the site database for identifying and characterizing FEPs.

Significance

The second criterion for evaluating FEPs, the evaluation of the significance of the impacts on performance assessment, allows FEPs above the probability threshold to be excluded from the analyses if they would not significantly change the results of performance assessments. In other words, this evaluation is intended to identify those FEPs whose projected probability would otherwise make them candidates for inclusion in the performance assessment, but whose effect on repository performance (however probable) can be demonstrated not to be significant. We are retaining the provisions presented in the proposed rule related to screening FEPs for their effects on the performance assessment results, and, for the reasons discussed below, are adding an additional provision regarding the analysis of seismic FEPs in § 197.36(c).

Today's final rule continues to focus on seismic and igneous events that cause direct damage to the engineered barrier system (e.g., repository drifts and waste packages). Regardless of other effects of these events on the disposal system, the timing and degree of waste package degradation has a significant effect on peak dose. The longevity of waste packages, when considering periods of hundreds of thousands of years, is uncertain and dependent on a number of factors. Therefore, the aspect of primary interest in evaluating seismic and igneous FEPs is their potential to breach waste packages and make radioactive material available for transport by infiltrating water (or, in the case of volcanic events, for direct release into the biosphere).

We believe that the use of the significance criterion of § 197.36(a) would assure a reasonable test of disposal system performance through the period of geologic stability. We recognize that setting forth the significance screening criterion in § 197.36(a) of our proposal as pertaining to the 10,000-year period could be construed as creating a situation in which important long-term processes could be excluded altogether from the analysis if they were not significant in the earlier period. However, we do not believe it is reasonable to interpret the significance criterion in this way. We have taken specific steps to ensure that significant long-term FEPs will be considered in the assessments. Consistent with NAS, we have addressed the long-term effects of seismic, igneous, and climatic FEPs. In addition, as described below, we have directed that the effects of general corrosion on the engineered barrier system be evaluated. Further, contrary to some comments, we explicitly required that FEPs included in the 10,000-year analysis must continue to be included for the longer-term (10,000 years to 1 million years) assessment. That is, FEPs included in the initial 10,000-year assessments will continue to operate throughout the period of geologic stability. These FEPs are already identified as appropriate for inclusion, and include fundamental physical and geologic processes that play roles in the release and transport of radionuclides, regardless of the time period covered by the assessment.

As noted above, to further bolster the significance screening criterion, in our proposal we considered whether it might be possible that FEPs eliminated from consideration during the first 10,000 years should be included in the longer-term assessment if they would have a significant bearing on performance at later times, even if they could legitimately be dismissed for the initial 10,000-year period. We focused our attention on FEPs affecting the engineered barriers since, as noted above, waste package failure is the dominant factor in the timing and magnitude of the peak dose, and is the primary reason for considering time frames up to 1 million years. To illustrate one consideration, thermal conditions in the repository change dramatically within the initial 10,000-year period, affecting the relative importance of some FEPs during and after the thermal pulse. However, FEPs involved in release and transport of radionuclides would generally be the same, regardless of when the waste package fails. Further, while FEPs associated with the natural characteristics of the site are active today or can be observed in the geologic

record, FEPs related to engineered barrier longevity involve extrapolation of shorter-term testing data. The degree to which natural FEPs can contribute to the breaching of waste packages is dependent to a large extent on the condition of those packages over time, making FEPs specific to the engineered barriers of particular importance. We took this approach for two reasons. First, we needed to clearly outline the reasons why a FEP that could be excluded on the basis of significance from the performance assessments for the initial 10,000-year period might potentially need to be re-considered for the lengthened compliance period. Second, we wanted to further our goal of issuing an implementable standard by limiting potentially unconstrained speculation over the longer compliance period. By discussing the considerations involved in evaluating FEPs that could be previously excluded, we hoped to lay out clearly the reasoning that could be used to justify inclusion of additional FEPs beyond those identified by the NAS committee.

We explicitly addressed general corrosion of the waste packages and other engineered barriers in our proposal because it is likely to be a significant degradation process at later times. We identified this FEP as being significant at times greater than 10,000 years because we believe it is the principal process FEP that could lead to ''gross breaching'' of the waste package over those extended time frames. Processes and events that could lead to ''gross breaching'' are of greatest significance to long term performance because, as noted by the NAS, ''canisters are likely to fail initially at small local openings through which water might enter, but out of which the diffusion of dissolved wastes will be slow until the canister is grossly breached.'' (NAS Report p. 86) It is the time of ''gross breaching'' that determines the time of more rapid release of dissolved wastes from the repository and hence may have a significant effect on the time and magnitude of the peak dose within 1 million years. Although the general corrosion process is slow, tends to decrease with decreasing temperature, and may not lead to significant releases for the first 10,000 years (depending on DOE's design of the waste package), we believe this FEP could be significant enough over the long term to require inclusion in the assessment of performance during the time of geologic stability, regardless of the screening decision in the first 10,000 years. Further, consideration of the uncertainties involved in extrapolating general corrosion data for the proposed waste package materials supports the inclusion of this potentially highly significant process (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Docket No. EPA–HQ–OAR–2005–0083–0085, section 5.4.1). Therefore, we believe that general corrosion, in addition to those FEPs related to seismicity, igneous activity and climate change identified by NAS, requires explicit inclusion in the assessments during the time of geologic stability.

We did, as one commenter pointed out, consider providing NRC more latitude to identify FEPs if they would significantly affect the peak dose. After further consideration, we decided against this approach, believing the provisions outlined above and the specification of general corrosion would adequately address this situation, provide a reasonable test of disposal system performance, and give DOE the necessary assurance that the important factors have been explicitly identified in the rule. As we noted above, we identified general corrosion of engineered barriers as a FEP potentially significant to the peak dose, and specified its inclusion because it is likely to be a significant degradation process at later times. Similarly, consistent with the NAS recommendations, we have specified the inclusion of climate change, seismicity, and igneous scenarios. We view the requirement to include general corrosion, as well as the climate, seismic, and igneous scenarios identified by NAS, as leading to an effective and extensive assessment, which can fairly be represented as a reasonable test of the disposal system. As we discussed in our proposal, the search for additional FEPs that might be significant at some point beyond 10,000 years can rapidly become highly speculative and limited in benefit. Therefore, we continue to believe that our approach represents ''informed judgment'' and a reasonable test of repository performance over time frames as long as 1 million years for the Yucca Mountain disposal system.

We also note that DOE submitted, as part of its comments on the proposed rule, the results of analyses based on a simplified peak dose model (Docket No. EPA–HQ–OAR–2005–0083–0352, Appendix 1). DOE states that it had compiled a database of FEPs, independent of compliance period, and evaluated them for inclusion in a 10,000-year analysis. DOE ''subsequently re-evaluated the FEPs over the period beyond 10,000 years'' and concluded that those FEPs excluded on the basis of significance within 10,000 years would also not have significant effects on performance projections beyond 10,000 years. DOE reached its conclusion both for FEPs excluded ''on a low consequence basis that is not affected by time'' and for ''gradual and continuing processes'' that ''are time dependent.''

Also as part of its comments, DOE submitted an analysis that identified three reasons why gradual and/or infrequent FEPs excluded on the basis of significance within 10,000 years would also not have significant effects on performance projections beyond 10,000 years: (1) An excluded FEP was determined to be of secondary importance to the primary significant degradation FEP, which was included in the analysis; (2) the inclusion of the FEP would tend to lower the peak dose during the time of geologic stability because it resulted in earlier and more diffuse releases (hence the exclusion of the FEP would be conservative from a peak dose perspective); or (3) the FEP is correlated in some way with temperature (e.g., in the rate with which it operates), so it would be less significant at later times due to the lower temperature in the repository over time. (Docket No. EPA–HQ–OAR–2005–0083–0352, Appendix 1, section 6.1 and Table 24) DOE considered FEPs of this nature associated with both the engineered and natural barrier systems. DOE concluded, for example, that some longer-term processes, such as general corrosion, may contribute to waste package failure, and disruptive seismic events may contribute to rockfall and other physical mechanisms leading to release.

We also considered public comments on this topic. Most commenters who disagreed with our proposal cited the limited data available on various corrosion mechanisms that could affect the waste packages. Many of these commenters seem to believe that we have excluded all corrosion mechanisms except general corrosion. This is not the case. We have explicitly directed that general corrosion be considered because it is likely to be the most significant such process at longer times; however, other corrosion mechanisms (such as localized corrosion) are more likely in the early period after disposal when temperatures inside the repository are high. If DOE determines these processes to be insignificant within 10,000 years, they are not likely to be more significant than general corrosion at later times. If they are included in the 10,000-year analysis,

they must be included in the longer-term assessments. One commenter highlighted our discussion of criticality as excluding one of the ''most worrisome threats to the repository'' over the long term. We cited an NRC technical study to support our conclusion that such an event is unlikely to be significant to the results of the assessments. Further, the DOE reference cited above concludes that all criticality scenarios fall below the probability screening threshold. An alternative view on the FEPs screening process was expressed in a report by the Electric Power Research Institute (EPRI): ''Thus, the current EPA screening limit is very conservative compared to the [Negligible Incremental Dose] level suggested by [NAS]. It is likely that there are many FEPs that DOE has already included in their analysis using the EPA approach that would not have been included if the [NAS]-recommended approach had been followed. Given that many additional FEPs are already included, it should be unnecessary to include any additional FEPs if the regulatory compliance period is extended beyond 10,000 years.'' (''Yucca Mountain Licensing Standard Options for Very Long Time Frames,'' April 2005, pp. 3–5 and 3–6, Docket No. EPA–HQ–OAR–2005–0083–0087) Taking all of this information into account, we continue to believe it is reasonable that, with the exception of the specific FEPs identified in 197.36(c), a FEP determined to be insignificant in the first 10,000 years may continue to be excluded in the post-10,000-year analyses.

As we noted above, we are modifying the proposed rule regarding the provisions related to seismic events in § 197.36(c). We noted in our proposal the NAS statement that ''[w]ith respect to the effects of seismicity on the hydrologic regime, the possibility of adverse effects due to displacements along existing fractures cannot be overlooked'' but that ''such displacements have an equal probability of favorably changing the hydrologic regime.'' (NAS Report p. 93). We argued that these effects would likely be minimal given the many small-scale changes that would be possible in the connectivity of the fracture networks, and that these effects would likely be small compared to the effects of climate change on the hydrologic behavior of the disposal system. We did not mean to imply that the seismic and climate events would involve the same hydrologic characteristics and processes or produce the same effects on the ground-water flow regime, but that the effects of one were likely to outweigh the effects of the other. While we still believe that is likely, we have concluded, after further consideration, that the issue of hydrologic effects resulting from seismic events needs to be examined in sufficient detail to address the point made by NAS. We believe the effects of fault displacement on the hydrologic regime will be adequately addressed by the variation in parameters such as hydraulic conductivity (i.e., evaluating reasonable variation in ground-water flow parameter values, whether seismically-induced or not, will illustrate the range of effects that might result from seismicity). However, NAS also identified another seismic effect on hydrology, namely the potential for transient rise in the ground-water table. In this instance, NAS did not simply state that such potential could be bounded, but noted site-specific studies suggesting ''a probable maximum transient rise on the order of 20 m or less.'' (NAS Report p. 94) Therefore, we now require that the effects of a rise in the ground-water table as a result of seismicity be considered. We are not specifying the extent of the rise to be considered, but leave that conclusion to be determined by NRC. NRC may choose to estimate the magnitude of ground-water table rise itself, or require DOE to include such estimates in its license application. In this case, however, we are also allowing NRC to make a judgment as to whether such a rise in ground water would be significant to the results of the performance assessment. If NRC determines that such a reasonably bounded scenario would not be significant, DOE would not be required to evaluate its effects.

We believe deferring to NRC on this point is the appropriate approach. The above quote from page 93 of the NAS Report makes it clear that changes to the hydrologic regime from seismic events would be equally likely to enhance or reduce transport of radionuclides. However, it would seem unlikely for changes to occur that would all combine to enhance transport to the saturated zone and then through the controlled area, such that concentrations of radionuclides at the RMEI location would be significantly increased. It seems more likely that localized changes would occur, which in sum would not significantly increase overall transport of radionuclides. Further, as noted above, we believe these seismically-induced changes are likely to be approximated by the normal variation in flow parameters. Changes in the hydrologic system from climate change (e.g., increases in infiltration) are expected to be quantitatively more significant than such changes resulting from seismic activity. We believe NRC is better positioned to make judgments regarding the significance and extent of such changes. We note that a dozen years of site characterization, scientific study, and performance assessments have been conducted since the NAS Report in 1995. NRC has conducted its own analyses as well as participated in ongoing technical exchanges with DOE over this period. We view deferring to NRC's judgment in this case as comparable to the approach we have taken with climate change. In that instance, we outlined the primary issues and overall approach, but specified that NRC would establish the details required to implement our standard.

Finally, we are retaining the provision related to climate change as it was proposed. We believe this is a reasonable approach, which allows NRC to characterize climate change beyond 10,000 years using constant conditions. This approach has the advantage of avoiding speculation regarding the timing and magnitude of climatic cycles, while addressing the important aspects of climate change. We received some comments that appear to have misinterpreted our proposal. Some comments suggested that our citation of the NAS statement to the effect that ''climate changes on the time scale of hundreds of years would probably have little if any effect on repository performance'' (NAS Report p. 92) as implying that we are ''ignoring longer-term changes'' such as ''glacial periods covering thousands of years.'' This represents a fundamental misunderstanding of our proposal, which would allow the future climate to be represented by what is essentially a glacial transition period lasting 990,000 years, but in any event placed no limits on the duration of periods of increased precipitation. Similarly, some commenters expressed the view that we ''required'' the future climate to be represented by constant conditions, or that we were suggesting that a single climate be used in all realizations. On the contrary, we cited the NAS conclusion that ''a doubling of the effective wetness'' might be significant as one justification for stating that it would be reasonable to represent far-future climate by constant conditions. Today's final rule, consistent with our proposal, leaves it to NRC to determine the parameter values that would define the future climate, including influential parameters other than precipitation,

such as temperature. Our specification of the outcome of ''increased water flow through the repository'' provides NRC with the flexibility to specify basic parameters, such as precipitation and temperature, that must be assumed by DOE, or to derive estimates of water flow directly. This is consistent with our current belief that the dominant mechanisms and flow paths for water to move from the surface through the repository and beyond should be determined by NRC rather than EPA. Further, we anticipated that ''constant climate conditions'' would be used as another parameter in the probabilistic assessment. That is, each realization would select its constant conditions from among a distribution of such conditions developed to reflect estimates of different future climate states. This is exactly the approach that NRC has taken in its proposal, i.e., that a range of deep percolation values be used (70 FR 53313–53320, September 8, 2005).

Some commenters disagreed with the approach of specifying constant climate conditions leading to a higher rate of water flow through the repository, stating that the ''non-linear'' nature of the disposal system would be more sensitive to a dynamic, cyclical representation of climate. This is not necessarily true, as the effects on the disposal system would be highly affected by the timing of waste package failures (e.g., whether they fail during a wetter or drier cycle). Some comments cite recent climate research suggesting that anthropogenic climate influences will postpone the next glacial cycle by roughly 500,000 years, or that today's climate at Yucca Mountain will actually be more representative of future climates than would the wetter conditions known to have occurred in the past. We believe that our final rule's approach to climate change provides a reasonable approach to address a point of fundamental uncertainty regarding long-term climate change and its role in the performance assessments, an uncertainty that cannot be removed by additional research into past climate cycles or modeling of present or future climate behavior. We refer to NAS on this point: ''Although the typical nature of past climate changes is well known, it is obviously *impossible to predict in detail either the nature or the timing of future climate change.*'' (NAS Report p. 77, emphasis added) Although continuing research will provide better understanding of past climate fluctuations, we believe that predicting with high confidence the timing and extent of climate fluctuations into the far future will remain an unrealistic goal. We believe that the understanding of past climate fluctuations and their potential effects on the Yucca Mountain hydrologic system is valuable information and should be applied to define the climate-related parameter values. As noted above, NRC has used such information to propose climate-related parameter values, which DOE will use to project the behavior of hydrologic processes at the site. We believe that this approach to treatment of a ''residual, unquantifiable uncertainty'' by the application of ''informed judgment'' is consistent with NAS guidance. (NAS Report p. 80)

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of the specific legal mandate of section 801 of the Energy Policy Act of 1992. Accordingly, EPA submitted this action to the Office of Management and Budget for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). We have determined that this rule contains no information collection requirements within the scope of the Paperwork Reduction Act. This final rule establishes requirements that apply only to DOE.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact upon a substantial number of small entities. This final rule will not impose any requirements on small entities. This final rule establishes requirements that apply only to DOE.

D. Unfunded Mandates Reform Act

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

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. This final rule implements requirements specifically set forth by the Congress in section 801 of the EnPA and establishes radiological protection standards applicable solely and exclusively to the Department of Energy's potential storage and disposal facility at Yucca Mountain. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule implements requirements specifically set forth by the Congress in section 801 of the EnPA and establishes radiological protection standards applicable solely and exclusively to the Department of Energy's potential storage and disposal facility at Yucca Mountain. The rule imposes no enforceable duty on any small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule implements requirements specifically set forth by the Congress in section 801 of the EnPA and establishes radiological protection standards applicable solely and exclusively to the Department of Energy's potential storage and disposal facility at Yucca Mountain. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This final rule will regulate only DOE on land owned by the Federal government. The rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

Although Executive Order 13175 does not apply to this rule, EPA specifically solicited additional comment on this proposed rule from tribal officials and consulted with tribal officials in developing this rule. EPA directly contacted more than 20 tribal governments and conducted three conference calls with members of tribal governments. In recognition of the importance of government-to-government consultation with tribes and the significance of tribal governments as sovereign nations, EPA extended the public comment period for tribal governments to December 31, 2005. Comments related to tribal issues, and our responses to them, may be found in Section 13 of the Response to Comments document associated with this final rule (docket ref).

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

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This final rule will apply only to DOE. Construction, operation, and closure of the repository at Yucca Mountain would fulfill the Federal government's commitment to manage the final disposition of spent nuclear fuel from commercial power reactors. However, there is no direct link between operation of the repository and an increased use of nuclear power. Other economic, technical, and policy factors will influence the extent to which nuclear energy is utilized.

I. National Technology Transfer and Advancement Act

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

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. In our original 1999 proposal (64 FR 46976), we requested public comment on potentially applicable voluntary consensus standards that would be appropriate for inclusion in the Yucca Mountain rule. However, we identified no such standards, and none were brought to our attention in comments. Therefore, the standards promulgated in 2001 and today's final revisions are site-specific and developed solely for application to the Yucca Mountain disposal facility.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this final rulemaking. This final rule implements requirements specifically set forth by the Congress in section 801 of the EnPA and establishes radiological protection standards applicable solely and exclusively to the Department of Energy's potential storage and disposal facility at Yucca Mountain. Section 801(a)(1) of the EnPA directs EPA to ''promulgate, by rule, public health and safety standards'' that '' prescribe the maximum annual effective dose equivalent to individual members of the public'' from releases of radioactive material from the Yucca Mountain repository. This final rule fulfills this statutory direction.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability. This final rule will apply only to DOE, and is issued by EPA in response to direction from Congress in the EnPA.

List of Subjects in 40 CFR Part 197

Environmental protection, Nuclear energy, Radiation protection, Radionuclides, Uranium, Waste treatment and disposal, Spent nuclear fuel, High-level radioactive waste.

Dated: September 30, 2008.

Stephen L. Johnson,

Administrator.

■ 40 CFR part 197 is amended as follows:

PART 197—PUBLIC HEALTH AND ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR YUCCA MOUNTAIN, NEVADA

■ 1. The authority citation for part 197 continues to read as follows:

Authority: Sec. 801, Pub. L. 102–486, 106 Stat. 2921, 42 U.S.C. 10141n.

Subpart A—Public Health and Environmental Standards for Storage

■ 2. Section 197.2 is amended by revising the definition of ''Effective dose equivalent'' to read as follows:

§ 197.2 What definitions apply in Subpart A?

* * * * *

Effective dose equivalent means the sum of the products of the dose equivalent received by specified tissues following an exposure of, or an intake of radionuclides into, specified tissues of the body, multiplied by appropriate weighting factors. Annual committed effective dose equivalents shall be calculated using weighting factors in appendix A of this part, unless otherwise directed by NRC in accordance with the introduction to appendix A of this part.

* * * * *

Subpart B—Public Health and Environmental Standards for Disposal

■ 3. Section 197.12 is amended by revising paragraph (1) of the definition of ''Performance assessment'' and the definition of ''Period of geologic stability'' to read as follows:

§ 197.12 What definitions apply in Subpart B?

* * * * *

Performance assessment means an analysis that:

(1) Identifies the features, events, processes, (except human intrusion), and sequences of events and processes (except human intrusion) that might affect the Yucca Mountain disposal system and their probabilities of occurring;

* * * * *

Period of geologic stability means the time during which the variability of geologic characteristics and their future behavior in and around the Yucca Mountain site can be bounded, that is, they can be projected within a reasonable range of possibilities. This period is defined to end at 1 million years after disposal.

* * * * *

■ 4. Section 197.13 is revised to read as follows:

§ 197.13 How is Subpart B implemented?

The NRC implements this subpart B. The DOE must demonstrate to NRC that there is a reasonable expectation of compliance with this subpart before NRC may issue a license.

(a) The NRC will determine compliance, based upon the arithmetic mean of the projected doses from DOE's performance assessments for the period within 1 million years after disposal, with:

(1) Sections 197.20(a)(1) and 197.20(a)(2) of this subpart; and

(2) Sections 197.25(b)(1), 197.25(b)(2), and 197.30 of this subpart, if performance assessment is used to demonstrate compliance with either or both of these sections.

(b) [Reserved]

■ 5. Section 197.15 is revised to read as follows:

§ 197.15 How must DOE take into account the changes that will occur during the period of geologic stability?

The DOE should not project changes in society, the biosphere (other than climate), human biology, or increases or decreases of human knowledge or technology. In all analyses done to demonstrate compliance with this part, DOE must assume that all of those factors remain constant as they are at the time of license application submission to NRC. However, DOE must vary factors related to the geology, hydrology, and climate based upon cautious, but reasonable assumptions of the changes in these factors that could affect the Yucca Mountain disposal system during the period of geologic stability, consistent with the requirements for performance assessments specified at § 197.36.

■ 6. Section 197.20 is revised to read as follows:

§ 197.20 What standard must DOE meet?

(a) The DOE must demonstrate, using performance assessment, that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than the following annual committed effective dose equivalent from releases from the undisturbed Yucca Mountain disposal system:

(1) 150 microsieverts (15 millirems) for 10,000 years following disposal; and

(2) 1 millisievert (100 millirems) after 10,000 years, but within the period of geologic stability.

(b) The DOE's performance assessment must include all potential pathways of radionuclide transport and exposure.

■ 7. Section 197.25 is revised to read as follows:

§ 197.25 What standard must DOE meet?

(a) The DOE must determine the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion (see § 197.26) could occur without recognition by the drillers.

(b) The DOE must demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual will receive an annual committed effective dose equivalent, as a result of the human intrusion, of no more than:

(1) 150 microsieverts (15 millirems) for 10,000 years following disposal; and

(2) 1 millisievert (100 millirems) after 10,000 years, but within the period of geologic stability.

(c) The analysis must include all potential environmental pathways of radionuclide transport and exposure.

■ 8. Section 197.35 is removed and reserved.

§ 197.35 [Removed and Reserved]

■ 9. Section 197.36 is revised to read as follows:

§ 197.36 Are there limits on what DOE must consider in the performance assessments?

(a) Yes, there are limits on what DOE must consider in the performance assessments.

(1) The DOE's performance assessments conducted to show compliance with §§ 197.20(a)(1), 197.25(b)(1), and 197.30 shall not include consideration of very unlikely features, events, or processes, i.e., those that are estimated to have less than one chance in 100,000,000 per year of occurring. Features, events, and processes with a higher chance of occurring shall be considered for use in performance assessments conducted to show compliance with §§ 197.20(a)(1), 197.25(b)(1), and 197.30, except as stipulated in paragraph (b) of this section. In addition, unless otherwise specified in these standards or NRC regulations, DOE's performance assessments need not evaluate the impacts resulting from features, events, and processes or sequences of events and processes with a higher chance of occurring if the results of the performance assessments would not be changed significantly in the initial 10,000-year period after disposal.

(2) The same features, events, and processes identified in paragraph (a)(1) of this section shall be used in performance assessments conducted to show compliance with §§ 197.20(a)(2) and 197.25(b)(2), with additional considerations as stipulated in paragraph (c) of this section.

(b) For performance assessments conducted to show compliance with §§ 197.25(b) and 197.30, DOE's performance assessments shall exclude unlikely features, events, or processes, or sequences of events and processes. The DOE should use the specific probability of the unlikely features, events, and processes as specified by NRC.

(c) For performance assessments conducted to show compliance with §§ 197.20(a)(2) and 197.25(b)(2), DOE's performance assessments shall project the continued effects of the features, events, and processes included in paragraph (a) of this section beyond the 10,000-year post-disposal period through the period of geologic stability. The DOE must evaluate all of the features, events, or processes included in paragraph (a) of this section, and also:

(1) The DOE must assess the effects of seismic and igneous scenarios, subject to the probability limits in paragraph (a) of this section for very unlikely features, events, and processes. Performance assessments conducted to show compliance with § 197.25(b)(2) are also subject to the probability limits for unlikely features, events, and processes as specified by NRC.

(i) The seismic analysis may be limited to the effects caused by damage to the drifts in the repository, failure of the waste packages, and changes in the elevation of the water table under Yucca Mountain. NRC may determine the magnitude of the water table rise and its significance on the results of the performance assessment, or NRC may require DOE to demonstrate the magnitude of the water table rise and its significance in the license application. If NRC determines that the increased elevation of the water table does not significantly affect the results of the performance assessment, NRC may choose to not require its consideration in the performance assessment.

(ii) The igneous analysis may be limited to the effects of a volcanic event directly intersecting the repository. The igneous event may be limited to that causing damage to the waste packages directly, causing releases of radionuclides to the biosphere, atmosphere, or ground water.

(2) The DOE must assess the effects of climate change. The climate change analysis may be limited to the effects of increased water flow through the repository as a result of climate change, and the resulting transport and release of radionuclides to the accessible environment. The nature and degree of climate change may be represented by constant climate conditions. The analysis may commence at 10,000 years after disposal and shall extend through the period of geologic stability. The NRC shall specify in regulation the values to be used to represent climate change, such as temperature, precipitation, or infiltration rate of water.

(3) The DOE must assess the effects of general corrosion on engineered barriers. The DOE may use a constant representative corrosion rate throughout the period of geologic stability or a distribution of corrosion rates correlated to other repository parameters.

■ 10. Appendix A to part 197 is added to read as follows:

Appendix A to Part 197—Calculation of Annual Committed Effective Dose Equivalent

Unless otherwise directed by NRC, DOE shall use the radiation weighting factors and tissue weighting factors in this Appendix to calculate the internal component of the annual committed effective dose equivalent for compliance with §§ 197.20 and 197.25 of this part. NRC may allow DOE to use updated factors issued after the effective date of this regulation. Any such factors shall have been issued by consensus scientific organizations and incorporated by EPA into Federal radiation guidance in order to be considered generally accepted and eligible for this use. Further, they must be compatible with the effective dose equivalent dose calculation methodology established in ICRP 26 and 30, and continued in ICRP 60 and 72, and incorporated in this appendix.

I. Equivalent Dose

The calculation of the committed effective dose equivalent (CEDE) begins with the determination of the equivalent dose, H_T, to a tissue or organ, T, listed in Table A.2 below by using the equation:

$$\underline{H}_T = \sum_R \underline{D}_{T,R} \cdot \underline{w}_R$$

where $D_{T,R}$ is the absorbed dose in rads (one gray, an SI unit, equals 100 rads) averaged over the tissue or organ, T, due to radiation type, R, and w_R is the radiation weighting factor which is given in Table A.1 below. The unit of equivalent dose is the rem (sievert, in SI units).

TABLE A.1—RADIATION WEIGHTING FACTORS, w_R[1]

Radiation type and energy range[2]	w_R value
Photons, all energies	1
Electrons and muons, all energies	1
Neutrons, energy	
< 10 keV	5
10 keV to 100 keV	10
> 100 keV to 2 MeV	20
>2 MeV to 20 MeV	10
> 20 MeV	5
Protons, other than recoil protons, > 2 MeV	5
Alpha particles, fission fragments, heavy nuclei	20

[1] All values relate to the radiation incident on the body or, for internal sources, emitted from the source.

[2] See paragraph A14 in ICRP Publication 60 for the choice of values for other radiation types and energies not in the table.

II. Effective Dose Equivalent

The next step is the calculation of the *effective dose equivalent,* E. The probability of occurrence of a stochastic effect in a tissue or organ is assumed to be proportional to the equivalent dose in the tissue or organ. The constant of proportionality differs for the various tissues of the body, but in assessing health detriment the total risk is required. This is taken into account using the tissue weighting factors, w_T in Table A.2, which represent the proportion of the stochastic risk resulting from irradiation of the tissue or organ to the total risk when the whole body is irradiated uniformly and H_T is the equivalent dose in the tissue or organ, T, in the equation:

$$E = \sum \underline{w}_T \cdot \underline{H}_T.$$

TABLE A.2—TISSUE WEIGHTING FACTORS, w_T

Tissue or organ	w_T value
Gonads	0.20
Bone marrow (red)	0.12
Colon	0.12
Lung	0.12
Stomach	0.12
Bladder	0.05
Breast	0.05
Liver	0.05
Esophagus	0.05
Thyroid	0.05
Skin	0.01
Bone surface	0.01
Remainder	[a b] 0.05

[a] Remainder is composed of the following tissues: adrenals, brain, extrathoracic airways, small intestine, kidneys, muscle, pancreas, spleen, thymus, and uterus.

[b] The value 0.05 is applied to the mass-weighted average dose to the Remainder tissues group, except when the following "splitting rule" applies: If a tissue of Remainder receives a dose in excess of that received by any of the 12 tissues for which weighting factors are specified, a weighting factor of 0.025 (half of Remainder) is applied to that tissue or organ and 0.025 to the mass-averaged committed equivalent dose equivalent in the rest of the Remainder tissues.

III. Annual Committed Tissue or Organ Equivalent Dose

For internal irradiation from incorporated radionuclides, the total absorbed dose will be spread out in time, being gradually delivered as the radionuclide decays. The time distribution of the absorbed dose rate will vary with the radionuclide, its form, the mode of intake and the tissue within which it is incorporated. To take account of this distribution the quantity *committed equivalent dose,* $H_T(\tau)$ where τ is the integration time in years following an intake over any particular year, is used and is the integral over time of the equivalent dose rate in a particular tissue or organ that will be received by an individual following an intake of radioactive material into the body:

$$H_T(\tau) = \int_{t_0}^{t_0+\tau} H_T(t)\,dt$$

for a single intake of activity at time t_0 where $H_T(\tau)$ is the relevant equivalent-dose rate in a tissue or organ at time t. For the purposes of this rule, the previously mentioned single intake may be considered to be an annual intake.

IV. Internal Component of the Annual Committed Effective Dose Equivalent

If the annual committed equivalent doses to the individual tissues or organs resulting from an annual intake are multiplied by the appropriate weighting factors, w_T, from table A.2, and then summed, the result will be the internal component of the *annual committed effective dose equivalent* $E(\tau)$:

$$E(\tau) = \sum_T w_T \cdot H_T(\tau).$$

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October 15, 2008

Part IV

Department of the Interior

Office of the Secretary

43 CFR Part 46

Implementation of the National Environmental Policy Act (NEPA) of 1969; Final Rule

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 46

RIN 1090–AA95

Implementation of the National Environmental Policy Act (NEPA) of 1969

AGENCY: Office of the Secretary, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is amending its regulations by adding a new part to codify its procedures for implementing the National Environmental Policy Act (NEPA), which are currently located in chapters 1–6 of Part 516 of the Departmental Manual (DM). This rule contains Departmental policies and procedures for compliance with NEPA, Executive Order (E.O.) 11514, E.O. 13352 and the Council on Environmental Quality's (CEQ) regulations (40 CFR Parts 1500–1508). Department officials will use this rule in conjunction with and supplementary to these authorities. The Department believes that codifying the procedures in regulations that are consistent with NEPA and the CEQ regulations will provide greater visibility to that which was previously contained in the DM and enhance cooperative conservation by highlighting opportunities for public engagement and input in the NEPA process.

The Department will continue to maintain Department's information and explanatory guidance pertaining to NEPA in the DM and Environmental Statement Memoranda (ESM) to assist bureaus in complying with NEPA. Bureau-specific NEPA procedures remain in 516 DM Chapters 8–15 and bureau guidance in explanatory and informational directives. Maintaining explanatory information in the Department's DM chapters and ESM, and bureau-specific explanatory and informational directives will facilitate timely responses to new ideas, new information, procedural interpretations, training needs, and editorial changes to assist field offices when implementing the NEPA process.

EFFECTIVE DATE: November 14, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Vijai N. Rai, Team Leader, Natural Resources Management, Office of Environmental Policy and Compliance, 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–6661. E-mail: *vijai_rai@ios.doi.gov*.

SUPPLEMENTARY INFORMATION: As a part of the conversion of the Department's NEPA procedures from 516 DM to regulations, a number of key changes have been made. This rule:

- Clarifies which actions are subject to NEPA section 102(2) by locating all relevant CEQ guidance in one place, along with supplementary Department procedures.
- Establishes the Department's documentation requirements for urgently needed emergency responses. The Responsible Official (RO) must assess and minimize potential environmental damage to the extent consistent with protecting life, property, and important natural, cultural and historic resources and, after the emergency, document that an emergency existed and describe the responsive actions taken.
- Incorporates CEQ guidance that the effects of a past action relevant to a cumulative impacts analysis of a proposed action may in some cases be documented by describing the current state of the resource the RO expects will be affected.
- Clarifies that the Department has discretion to determine, on a case-by-case basis, how to involve the public in the preparation of EAs.
- Highlights that adaptive management strategies may be incorporated into alternatives, including the proposed action.
- Incorporates language from the statute and CEQ guidance that EAs need only analyze the proposed action and may proceed without consideration of additional alternatives when there are no unresolved conflicts concerning alternative uses of available resources.

This rule is organized under subparts A through E, covering the material currently in 516 DM Chapters 1 through 6. The Department is replacing these chapters with new 516 DM Chapters 1–3, which will include explanatory guidance on these regulations. These revised chapters will be available to the public before the effective date of this rule and will be found at *http://www.doi.gov/oepc*. The Department did not include 516 DM Chapter 7 in this rule because it provides internal administrative guidance specific to Department review of environmental documents and project proposals prepared by other Federal agencies. Chapters 8–15 of 516 DM continue to contain bureau-specific NEPA implementing procedures. In addition, other guidance pertaining to the Department's NEPA regulations and the bureaus' NEPA procedures will be contained in explanatory and informational directives. These explanatory and information directives will be contained either in the DM or ESM (for Departmental guidance), bureau NEPA handbooks (for bureau-specific guidance), or both.

The CEQ was consulted on the proposed and final rule. CEQ issued a letter stating that CEQ has reviewed this rule and found it to be in conformity with NEPA and CEQ regulations (per 40 CFR 1507.3 and NEPA section 102(2)(B)).

Comments on the Proposal

This rule was published as a proposed rule in the **Federal Register** (73 FR 126) on January 2, 2008, and there was a 60-day comment period that closed on March 3, 2008. The Department received 100 comments. These comments were in the form of letters, e-mails, and faxes. Of the 100 comments received 50 were substantive; the remaining comments were all variations of a single form letter addressing one or more of three issues, which have been addressed below. The Department very much appreciates the response of the public, which has assisted the Department in improving the clarity of this final rule.

In addition to changes made to the final rule in response to specific comments received, which are noted below, the Department has made minor revisions throughout in order to improve the clarity of the rule. In general, these latter revisions do not change the substance or meaning of any of the provisions proposed on January 2, 2008, except in one or two instances as noted. As contemplated in the preamble to the proposed rule, the Department has added a provision specifying the circumstances in which an Environmental Assessment (EA) may tier to an Environmental Impact Statement (EIS) and in which a bureau may reach a Finding of No Significant Impact (FONSI) or Finding of No New Significant Impact (FONNSI). Please see paragraph 46.140(c).

General Comments on the Proposed Rule

Comment: Several commenters questioned the rationale for moving the Department's NEPA procedures from the DM to regulations and requested further clarification of this rationale.

Response: The Department believes that codifying the procedures in regulation will provide greater visibility to that which was previously contained in the DM and highlight opportunities for public engagement and input in the NEPA process. The Department believes that this greater accessibility of the regulations, when published in the Code of Federal Regulations (CFR), will allow

the public to more easily participate in the NEPA process.

Comment: Some commenters stated that the Department should include the issue of global climate change in all environmental analysis documents. They stated that the Department has a legal obligation under NEPA to analyze the effects of global climate change as shaping the context within which proposed actions take place, as well as the impacts of proposed projects on climate change. Another group recommended that the Department include a mandate that an environmental analysis of climate change impacts be included in the NEPA analysis prepared for Resource Management Plans (RMPs). Several groups suggested that the Department should require planning documents for fossil fuel developments to consider various energy alternatives, including conservation and energy efficiency. They also recommended that the Department analyze greenhouse gas emissions in all decision documents related to energy development on public lands. Another commenter suggested that the Department compile information about landscape changes in response to climate change to use for programmatic NEPA documents.

Response: Climate change issues can arise in relation to the consideration of whether there are direct or indirect effects of the greenhouse gas emissions from a proposed action, the cumulative effect of greenhouse gas emissions, and the effect of climate change on the proposed action or alternatives. The extent to which agencies address the effects of climate change on the aspects of the environment affected by the proposed action depends on the specific effects of the proposed action, their nexus with climate change effects on the same aspects of the environment, and their implications for adaptation to the effects of climate change. Whether and to what extent greenhouse gas emissions and/or climate change effects warrant analysis is the type of determination that Responsible Officials make when determining the appropriate scope of the NEPA analysis. Extensive discussion regarding the role of the Department, as well as the Federal government as a whole, with respect to the effects of greenhouse gas emissions and/or global climate change is beyond the scope of this rule concerning environmental analysis generally. Consequently, the final rule does not contain explicit provisions addressing global climate change.

Comment: One commenter stated that the Department should include a provision that agencies must seek input through the NEPA process from local, regional, State, and tribal health agencies when making decisions that may impact human health. Several groups recommend requiring a Health Impact Assessment (which is a tool used by the World Health Organization) when a project may impact human health.

Response: The Department appreciates this suggestion but does not believe inclusion of a specific requirement in this regard is appropriate in this rule. Individual bureaus of the Department have addressed and will continue to address possible impacts to human health in certain circumstances, such as with respect to subsistence issues in Alaska. Whether or not a Health Impact Assessment is the appropriate means to assess potential impacts on human health with regard to a particular proposal is the type of determination that Responsible Officials make for all manner of possible impacts when determining the appropriate scope of the NEPA analysis.

Responses to Comments on Individual Provisions, Including Analysis of Changes Made

The following paragraphs contain responses to comments made on individual provisions of the proposed rule and incorporate discussion of changes made to the rule as proposed in January 2008.

Subpart A: General Information

Section 46.10 Purpose of this Part. A new paragraph (c) has been added to clarify that, in accordance with CEQ regulations at 40 CFR 1500.3, trivial violations of these regulations are not intended to give rise to any independent cause of action.

Section 46.30 Definitions. This section supplements the terms found in the CEQ regulations and adds several new definitions. The terms affected are the following: Adaptive management; Bureau; Community-based training; Controversial; Environmental Statement Memoranda; Environmentally preferable alternative; No action alternative; Proposed action; Reasonably foreseeable future actions; and Responsible Official. A definition of consensus-based management has been placed in section 46.110. The definitions of no action alternative and proposed action have been moved to this section for the final rule from proposed section 46.420, as these terms may apply to both EAs and EISs. Comments and responses addressing these terms may be found below, in the discussion of section 46.420.

Comment: Several commenters expressed concern that the definition of ''community'' may be ''misinterpreted in a variety of ways to mean local and county governments affected by a proposed action, or communities of individuals with a common interest in the project who do not necessarily live in the area directly affected by the project.'' Several groups recommended that the Department include and review the definition(s) in Environmental Statement Memorandum No. ESM03–7.

Response: Because of the possibility of confusion noted by the commenter, the Department has included a provision at section 46.110 focusing on ''consensus-based management'' as incorporating the ideas reflected in the emphasis on community involvement in the NEPA process. In developing the provision addressing consensus-based management, the Department relied upon the existing ESM03–7.

Comment: Many commenters expressed concerns with the proposed definition of ''controversial.'' Some stated that the size or nature of a proposed action should not render the action controversial under NEPA. Several individuals are concerned that the proposed definition of ''controversial'' would render all proposed projects on public lands as being controversial and will protract NEPA analyses. One group applauded the Department for defining ''controversial'' in terms of disputes over the bio-physical effects of a project rather than merely opposition to a project.

Response: The language in the proposed rule reflects current case precedent on the meaning of ''controversial'' under NEPA and has been retained, but with modification to address the confusion regarding the reference to ''size'' and ''nature'' in the final rule. Courts have consistently specified that disagreement must be with respect to the character of the effects on the quality of the human environment in order to be considered to be ''controversial'' within the meaning of NEPA, rather than a mere matter of the unpopularity of a proposal. *See Como-Falcon Coalition, Inc.* v. *U.S. Dept. of Labor*, 609 F.2d 342 (8th Cir. 1978), *cert. denied*, 446 U.S. 936 (''Mere opposition to federal project does not make project controversial so as to require environmental impact statement.'')

Comment: Some commenters suggested that the definition of ''environmentally preferable alternatives'' does not make clear whether the requirement applies to Records of Decision (RODs) on projects

analyzed in an EIS or EA or only to those analyzed in an EIS. They recommended adding a sentence at the end of the definition clarifying that the requirement applies to EAs and EISs.

Response: CEQ regulations require the identification of at least one environmentally preferable alternative in a ROD, which is the decision document issued after completion of an EIS. (40 CFR 1505.2(b); *see also* Question 6b of CEQ's ''Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,'' 46 Fed. Reg. 18026 (Mar. 23, 1981), as amended (hereinafter CEQ's ''Forty Most Asked Questions''). The CEQ regulations do not identify the decision document issued after completion of an EA/FONSI, and bureaus do not issue RODs in this situation. Therefore, the Department has not changed the definition in response to this comment.

Comment: Several commenters expressed reservations about the definition of Preliminary Environmental Impact Statement (PEIS). They suggested that the role of the PEIS be clarified. One commenter wanted the Department to include provisions on how the scoping process and the PEIS will interact. Others wanted to know what level of detail should be included in a PEIS and whether use of a PEIS would introduce an additional requirement for public comment. One commenter strongly disagreed with the use of a PEIS, stating that the use of a PEIS could delay a DEIS or FEIS and could add additional expenses to private proponents that are funding NEPA projects. They recommended that the Department add a provision to the rule that would enforce time restrictions on the PEIS process.

Response: Because of the confusion and concern surrounding the PEIS, and upon further reflection, the Department has decided not to include this provision in the final rule. The definition in the proposed rule found at section 46.30 and description in sections 46.415 and 46.420 have been removed in the final rule. The Department continues to encourage collaboration with the public in an approach to alternative development and decision-making. The implementation of any such approach is determined by the RO. The PEIS was simply an optional tool and its removal from the final rule will not diminish this continuing Departmental emphasis on collaboration. The RO will still be free to involve and inform the public regarding each particular NEPA analysis in a manner that best meets the public and government needs.

Comment: One commenter stated that the Department should add ''agency'' to the definition of ''Reasonably Foreseeable Future Actions'' to ensure the agency covers all reasonably foreseeable actions that flow from proposed actions. Several commenters stated that the proposed definition of ''Reasonably Foreseeable Future Actions'' conflicts with the definition of ''Reasonably Foreseeable Development Scenario'' contained in the Instruction Memorandum 2004–089 issued by the BLM. Another commenter stated that the proposed definition of ''Reasonably Foreseeable Future Actions'' does not follow CEQ guidelines.

Response: The final rule defines ''reasonably foreseeable future actions'' to explain a term used in CEQ's definition for ''cumulative impact'' at 40 CFR 1508.7. The Department has attempted to strike a balance by eliminating speculation about activities that are not yet planned, but including those that are reasonably foreseeable and are expected to occur (for example, based on other development in the area when there has been some decision, funding, or development of a proposal (see 40 CFR 1508.23)). The Department does not believe that the definition of ''reasonably foreseeable future actions'' conflicts with the description of the Bureau of Land Management's analytical tool, the ''reasonably foreseeable development scenario'' or RFD. The RFD is a projection (scenario) of oil and gas exploration, development, production, and reclamation activity that may occur in a specific resource area during a specific period of time; as such, the analysis in the RFD can provide basic information about oil and gas activities that may inform the analysis of reasonably foreseeable future actions.

In order to clarify that reasonably foreseeable future actions include both ''federal and non-federal'' activities, we have added these terms in the definition in section 46.30. This is consistent with 40 CFR 1508.7. The Department has added language to clarify that the existing decisions, funding, or proposals are those that have been brought to the attention of the RO.

In its mention of the ''Responsible Official of ordinary prudence'' the definition also incorporates the reasonableness standard emphasized by the Supreme Court as ''inherent in NEPA and its implementing regulations.'' In *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 770 (2004), the Court reaffirmed that this ''rule of reason'' is what ensures that agencies include in the analyses that they prepare information useful in the decision-making process. In that case, the Court noted that the agency in question, the Federal Motor Carrier Safety Administration in the Department of Transportation, properly considered the incremental effects of its own safety rules in the context of the effects of the reasonably foreseeable possibility that the President might lift the moratorium on cross-border operations of Mexican motor carriers. *Id.* In those circumstances, the possibility that the President might act in one of several ways was neither an existing decision, matter of funding, or proposal, but was nevertheless a possibility that a person of ordinary prudence would consider when reaching a decision regarding the proposed action of promulgating the rule at issue in that case. Similarly, in some circumstances an RO of ordinary prudence would include analysis of actions that, while not yet proposed, funded, or the subject of a decision, nevertheless are likely or foreseeable enough to provide important information and context within which any significant incremental effects of the proposed action would be revealed.

Subpart B: Protection and Enhancement of Environmental Quality

The proposed rule did not include portions of 516 DM Chapter 1 that are merely explanatory in that they address internal Departmental processes. This information will be retained in the DM or will be issued as additional explanatory information by the Department's Office of Environmental Policy and Compliance in Environmental Statement Memoranda.

In this final rule, this subpart includes the following sections:

Section 46.100 Federal action subject to the procedural requirements of NEPA. This section provides clarification on when a proposed action is subject to the procedural requirements of NEPA. Paragraph 46.100(b)(4), ''The proposed action is not exempt from the requirements of section 102(2) of NEPA,'' refers to those situations where, either a statute specifically provides that compliance with section 102(2) of NEPA is not required, or where, for instance, a bureau is required by law to take a specific action such that NEPA is not triggered. For example, Public Law 105–167 mandates the Bureau of Land Management (BLM) to exchange certain mineral interests. In this situation, section 102(2) of NEPA would not apply because the law removes BLM's decision making discretion. Also, this provision refers to situations where there is a clear and unavoidable conflict

between NEPA compliance and another statutory authority such that NEPA compliance is not required. For example, if the timing requirements of a more recent statutory authority makes NEPA compliance impossible, NEPA must give way to the more recent statute.

Similarly, the final rule clarifies that the proposed action is subject to the procedural requirements of NEPA and the CEQ regulations depending on ''the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval will be provided to implement it'' paragraph 46.100(a). The criteria for making this determination include, *inter alia*, ''when the bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal'' paragraph 46.100(b)(1), and ''the effects can be meaningfully evaluated'' and ''the proposed action would cause effects on the human environment'' paragraph 46.100(b)(3).

The clarifications provided in this section have been made, in part, in order to ensure that the rule is consistent with the Supreme Court's decision in *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 770 (2004). In *Public Citizen*, the Court explained that a ''but for'' causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations, but that there must be ''a reasonably close causal relationship'' between the environmental effect and the alleged cause and that this requirement was analogous to the ''familiar doctrine of proximate cause from tort law.'' 541 U.S. at 767. The Court reaffirmed that ''courts must look to the underlying policies or legislative intent in order to draw a manageable line between those causal changes that may make an actor responsible for an effect and those that do not'' and that inherent in NEPA and its implementing regulations is a ''rule of reason.'' *Id.*

Comment: Some commenters expressed concern regarding the procedural requirements of NEPA. One group stated that the Department's procedural actions should be subject to NEPA requirements regardless of whether or not sufficient funds are available. This group stated that if a proposed action is even being considered by a RO, the procedural requirements of NEPA must apply. Another group suggested the Department add an additional subsection that offers guidance whether an ''action'' is subject to NEPA compliance.

Response: The Department agrees that the procedural requirements of NEPA apply when a proposal consistent with 40 CFR 1508.23 has been developed. Mere consideration of a possible project however does not constitute a proposed action that can be analyzed under NEPA. Rather, under 40 CFR 1508.23, a proposal is ripe for analysis when an agency is ''actively preparing to make a decision.''

When the proposed action involves funding, Federal control over the expenditure of the funds by the recipient is essential to determining what constitutes a ''Federal'' action that requires NEPA compliance. This is consistent with 40 CFR 1508.18(a). The issue of funding does not turn on the sufficiency, or lack thereof, of the funding, but on the degree of Federal control or influence over the use of the funds. The language in the final rule regarding whether a proposal is subject to NEPA compliance has been clarified by addressing the question of whether NEPA applies in paragraph 46.100(a), and when the NEPA analysis should be conducted in paragraph 46.100(b).

Comment: One individual urged the Department to not add additional obligations that are not currently required under NEPA, particularly with respect to the emphasis on public participation.

Response: This final rule adds no additional obligations not currently required under NEPA and the CEQ regulations. Section 46.100 is an effort to consolidate existing requirements in 40 CFR 1508.18, 40 CFR 1508.23, and 40 CFR 1508.25, among others. For instance in 40 CFR 1500.2(d) CEQ requires that Federal agencies ''* * * encourage and facilitate public involvement in decisions which affect the quality of the human environment.'' Consistent with this provision, paragraph 46.305(a) requires that a bureau must, to the extent practicable, provide for public notification and public involvement when an environmental assessment is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the RO. Individual bureaus will be able to provide in their explanatory and informational directives descriptions of ways of carrying out public notification and involvement appropriate to different kinds of proposed actions.

Comment: One commenter stated that the proposed rule as written suggests that a NEPA review would only occur to the extent the effects on the human environment could be meaningfully evaluated and that the proposed provision at 46.100 seemed to ''conflict with situations where there are 'unknowns' and the bureau cannot meaningfully evaluate the effects, but it nonetheless is necessary to move ahead with the proposal.'' This commenter suggested that the Department clarify that NEPA review will proceed and will be based on the best available data.

Response: The Department agrees that NEPA analysis takes place when the effects of a proposed action can be meaningfully evaluated, as stated in the revised paragraph 46.100(b). Further, the Department appreciates the commenter highlighting the possibility of confusion resulting from the structure of 46.100 as proposed. As proposed, section 46.100 addressed both the questions of whether and when a proposed action is subject to the procedural requirements of NEPA, but without grouping the provisions addressing these two issues separately. In response to this comment, and upon further review, the Department has restructured section 46.100 to separate these two issues into paragraphs (a) and (b) for the sake of clarity. The revised paragraph 46.100(b) identifies when in its development the proposed Federal action the NEPA process should be applied and, if meaningful evaluation of effects cannot occur, then the proposal is not yet ripe for analysis under NEPA.

That being said, NEPA itself does not require the use of ''best available data;'' rather, CEQ regulations demand information of ''high quality'' and professional integrity. 40 CFR 1500.1, 1502.24. However, the Department's obligations under other authorities, such as the Information Quality Act Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554), do require bureaus to use the best available data. While discussion of the Department's obligations under the Information Quality Act is outside the scope of this rule, the Department concurs that meaningful evaluation must be carried out on the basis of whatever data is available. The Department does not believe that this is inconsistent with CEQ's provision regarding those situations where information is incomplete or unavailable (40 CFR 1502.22). In fact, rather than stating that meaningful evaluation cannot take place when there are ''unknowns'' as the commenter appears to suggest, the CEQ regulations provide steps to take in order that meaningful evaluation can continue when information is lacking; therefore, the Department does not believe

revision of this rule is necessary to address this point.

Comment: Several individuals responded to our request for input regarding the use of FONSIs based on tiered EAs where a FONSI would be, in effect, a finding of no significant impacts other than those already disclosed and analyzed in the EIS to which the EA is tiered. These individuals supported the concept.

Response: The Department appreciates the comment. The Department has added the provision as contemplated. See section 46.140, which provides for the use of tiered documents. See also the detailed response to comments on section 46.140, below. Under this final rule a FONSI or FONNSI (Finding of No New Significant Impact) can be prepared based on an EA that is tiered to an EIS. This approach is consistent with CEQ regulations at 40 CFR 1508.28.

Comment: One group recommended the Department clarify that the National Park Service (NPS) should prepare an EA or EIS as part of its submission to the National Capital Planning Commission.

Response: This comment was specifically referring to situations where a particular type of proposed action may be subject to categorical exclusion (CX or CE) under the Department's NEPA procedures but not under the NEPA procedures of another Federal agency such as, in this case, the NEPA procedures of the National Capital Planning Commission (NCPC). While, as a general rule, each Federal agency is responsible for compliance with NEPA consistent with both CEQ's regulations and its own procedures for implementing NEPA, the particular issue raised concerns a very specific situation involving two Federal agencies acting under very specific and distinct authorities. Therefore, the Department declines to address this comment more specifically and does not believe a specific provision is necessary in general Departmental procedures.

Section 46.105 Using a contractor to prepare environmental documents. This section explains how bureaus may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(c).

Comment: Some commenters wanted the Department to clarify requirements for working with a contractor. Some stated that strict requirements should be put into place for selection of a contractor to ensure the adequacy of documents, independent evaluation, and sound management practices. One individual stated that the Department should adopt existing CEQ guidance on the use and selection of contractors.

Response: The Department complies with CEQ regulations and follows existing CEQ guidance on the selection and use of contractors. Each bureau is responsible for determining how its officials will work with contractors, subject to the CEQ regulations and guidance. In any event, the RO is responsible for, or is the approving official for, the adequacy of the environmental document. The Department does not believe any further clarification of the rule is necessary.

Comment: Another commenter applauded the Department for a ''clear articulation of the use of contractors for NEPA document preparation.''

Response: The Department appreciates the comment.

Section 46.110 Incorporating consensus-based management. This section provides a definition of consensus-based management and incorporates this approach as part of the Department's NEPA processes. Paragraph 46.110(e), requiring bureaus to develop directive to implement section 46.110 has been removed from the final rule as not appropriate for regulatory treatment.

Comment: Most commenters supported the Department's proposed rule on consensus-based management. However, many individuals expressed concerns regarding the breadth of the definition of consensus-based management. Because of the lack of concrete provisions within this section, many individuals suggested the NEPA process could become ''unnecessarily time consuming and costly.'' Several individuals stated that the word ''consensus'' should be taken out of the proposed rule because ''consensus'' suggests interested parties will determine the preferred alternative. Other individuals suggested that the term ''consensus'' has the potential to create ''unreasonable expectations in the public.'' One group suggested replacing ''consensus'' with ''open and transparent community involvement and input.'' Another suggestion for the replacement of the word ''consensus'' was ''collaboration.'' Several individuals stated that the proposal for consensus-based management should be withdrawn and that the Department should continue following the current CEQ regulations on collaboration. Individuals suggested that the Department clearly define what constitutes community.

Response: The Department has revised section 46.110, and added a definition for ''consensus-based management'' to this section. The definition comes from the existing ESM03–7, and expresses existing Department policy. The definition of ''consensus-based management'' has been modified in order to render it in regulatory language. Many of the commenters seem to assume that in the absence of consensus the Department will not take action. This is not the case. While the RO is required to consider the consensus-based management alternative whenever practicable, at all times discretion remains with the RO regarding decisions, if any, to be made with respect to the proposed action. While the Department requires the use of consensus-based management, whenever practicable, we have added a provision that if the RO determines that the consensus-based alternative should not be the preferred alternative, an explanation of the rationale behind this decision is to be incorporated in the environmental document.

Comment: Some commenters stated that the technique of consensus-based management may be impossible to implement. One group was particularly concerned with the definition of ''interested party.'' They believe it may be impossible for the Department to determine who the interested parties are and that the process of managing interested parties may be cumbersome and add expense and time onto NEPA projects. This group suggested that the Department develop a clear and concise definition of ''interested parties.''

Response: The Department acknowledges that consensus may not always be achievable or consistent with the Department's legal obligations or policy decisions. However, the Department requires the use of consensus-based management whenever practicable. CEQ regulations direct agencies to encourage and facilitate public involvement in the NEPA process. 40 CFR 1500.2(d), 40 CFR 1506.6. The Department agrees that use of the term ''interested parties'' may cause confusion. The Department has replaced the term ''interested parties'' with ''those persons or organizations who may be interested or affected'' which is used in the CEQ regulations. See for example 40 CFR 1503.1.

Comment: Several individuals stated that it is vital that the interests of the ''regional community'' be taken into account during the NEPA process. One commenter applauded the Department for including consensus-based management in the proposed rule and for taking additional steps to support the ''cooperative conservation policy.'' One group believed this proposal would ''provide an avenue for impacted local governments and citizens to become

involved in the agency review process, and have their interests acknowledged in a meaningful way, and achieve a win-win final decision.''

Response: The Department appreciates the comment and agrees that the interests of the regional and local community should be taken into account during the NEPA process.

Comment: Several commenters stated that the Department needs to add a provision to the rule that clearly spells out the role of the RO. This provision would include directives on selecting alternatives.

Response: The Department has defined ''Responsible Official'' under section 46.30. The Department has also specified in the definition that the RO is responsible for NEPA compliance (which includes the selection of alternatives). The particular identity of the RO for any given proposed action is determined by the relevant statute, regulation, DM, or specific delegation document that grants the authority for that particular action.

Comment: Some individuals also stated that a process should be included to assure the public that the community's work is reflected in the evaluation of the proposed action and the final decision, even if the community alternative is not eventually selected as the agency's preferred alternative. One group suggested that the Department define what constitutes ''assurance'' that participant work is considered in the decision-making process. Several groups stated that the community alternative must fully comply with NEPA, CEQ regulations, and all Department policies and procedures in order to be considered by the RO. Several groups refer to court cases stating that NEPA ''does not require agencies to consider alternatives that are not feasible or practical.'' Individuals would like the Department to explain what a community alternative consists of, how it will be evaluated, who is the relevant community, and how many community alternatives can be proposed for each project. They also expressed concern that the proposed rule suggests all alternatives submitted must be analyzed in detail.

Response: Section 46.110 provides for the evaluation of reasonable alternatives presented by persons, organizations or communities who may be interested or affected by a proposed action in the NEPA document even if the RO does not select that alternative for implementation. The final rule clarifies that, while all or a reasonable number of examples covering the full spectrum of reasonable alternatives may be considered, a consensus-based management alternative (if there are any presented) may only be selected if it is fully consistent with the purpose of and need for the proposed action, as well as with NEPA generally, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance could be selected. It also provides that bureaus must be able to show that participants' or community's input is reflected in the evaluation of the proposed action and the final decision. Therefore, the Department believes that the final rule adequately addresses these comments.

Comment: Some individuals indicated that NEPA does not require consensus and stated the proposed rule goes against the direction of the CEQ regulations. Some commenters directed the Department to review CEQ's ''Collaboration in NEPA'' handbook. Several groups recommended that the Department include and review the Environmental Statement Memorandum No. ESM03–7.

Response: The Department agrees neither NEPA nor the CEQ regulations require consensus. This new regulation requires the use of consensus-based management whenever practicable. Consensus-based management is not inconsistent with the intent of NEPA and the CEQ regulations. The Department has reviewed CEQ's publication ''Collaboration in NEPA—*A Handbook for NEPA Practitioners*'' available at *http://ceq.eh.doe.gov/nepa/nepapubs/Collaboration_in_NEPA_Oct2007.pdf*. While consensus-based management, like collaboration, can be a useful tool, the Department recognizes that consensus-based management may not be appropriate in every case. The final rule does not set consensus-based management requirements, including timelines or documentation of when parties become involved in the process. Similar to collaborative processes, consensus-based management processes, like public involvement and scoping, will vary depending on the circumstances surrounding a particular proposed action. Some situations will require a lot of time and others will not. Regardless of the level or kind of public involvement that takes place, at all times the RO remains the decision maker.

Comment: One group suggested that the Department remove paragraph (b) because it is ''duplicative, ambiguous, and unnecessary.'' They believed this section simply restates the requirement in section 1502.14 of the CEQ regulations that requires agencies evaluate ''all reasonable alternatives.'' They also expressed concern that community-based alternatives may be given preferential weight over the project proponent's alternative.

Response: The Department does not agree that the section is unnecessary and duplicative or that it simply restates the requirement in section 1502.14 of the CEQ regulations. Although there are some common elements to 40 CFR 1502.14 and paragraph 46.110(b), this paragraph requires the use of consensus-based management in NEPA processes and decision-making whenever practicable. The RO is responsible for an analysis of the reasonable alternatives, and the NEPA process allows for the selection of an alternative based on the consideration of environmental effects, as well as the discretionary evaluation of the RO. The intent of this provision is that alternatives presented by those persons or organizations that may be interested or affected, including applicants, be given consideration.

Comment: One group wanted to see a mandate added to the proposed rule that requires the Department to work with tribal governments. One individual suggested that the word ''considered'' should be changed to ''adopted,'' ''accepted,'' or ''implemented'' to ensure consideration is given to an alternative proposed by a tribe.

Response: The Department has a government-to-government relationship with federally-recognized tribes and as such specifically provides for consultation, coordination and cooperation. We consider all alternatives, including those proposed by the tribes, as part of the NEPA process, but cannot adopt, accept, or implement any alternative before full evaluation of all reasonable alternatives. Therefore, the Department declines to adopt the group's recommendation.

Section 46.113 Scope of the analysis. This section, as proposed, addressed the relationships between connected, cumulative, and similar actions and direct, indirect and cumulative impacts. This section has been removed from the final rule.

Comment: Some commenters stated that the proposed rule is not clear with respect to the issue of what projects need to be included in the scope of analysis. One individual suggested that the Department should include language in the proposed rule clarifying that the effects of connected, cumulative and similar actions must be included in the effects analysis as indirect or cumulative effects. These actions do not become part of the proposed action, and alternatives for these actions need not be considered in the analysis.

One individual suggests that the Department change the language to provide guidance that allows bureaus to determine which projects need to be included in a cumulative effects analysis. They recommend clearly defining ''connected,'' ''cumulative,'' ''direct,'' and ''indirect.'' If these changes are made, some believe this rule will provide uniformity, consistency, and predictability to the NEPA process.

Another individual suggested ''should'' be removed from this section. They expressed concern that the current wording implies that connected and cumulative action analysis is optional.

One commenter recommended that this section should be deleted in its entirety because it is inconsistent with CEQ regulations. They recommended that the Department revise the section to reflect the difference between the treatment of connected, cumulative, and similar actions and the treatment of the effects of such actions.

Response: In light of the confusion reflected in several of the comments, as well as upon further consideration, the Department has eliminated this provision from the final rule. Bureaus will continue to follow CEQ regulations regarding scope of analysis at 40 CFR 1508.25, as well as bureau specific directives.

Section 46.115 Consideration of past actions in the analysis of cumulative effects. This section incorporates CEQ guidance issued on June 24, 2005 that clarifies how past actions should be considered in a cumulative effects analysis. The Department has elected not to repeat the specific provisions of the CEQ guidance in the final rule. Responsible Officials are directed to refer to the applicable CEQ regulations and the June 24, 2005 CEQ guidance.

Comment: Several groups commended the Department for its efforts to bring clarity to the NEPA cumulative effects analysis.

Response: The Department appreciates the comments.

Comment: Several groups stated that CEQ regulations do not contain a ''significant cause-and-effect'' filter excluding projects from cumulative impact analysis because the project's effects are minor. One group was concerned that the proposed rule contains measures that would ''constrain the usefulness of agencies' analyses of cumulative impacts,'' and would violate CEQ regulations. This group suggested that the proposed rule would constrain the scope of actions whose effects should be considered in a cumulative impacts analysis.

Some individuals stated that the Department is proposing to curtail the consideration and evaluation of past actions when proposing future activities. They stated that the agencies and public should be informed of potential environmental consequences before decisions are made. Others suggested this section does not provide guidance to the RO on what past actions and proposed future actions should be included in the analysis. Groups stated that a Department field office has no inherent expertise in determining which actions are relevant to a cumulative impacts analysis and should therefore not be vested with such discretion. Several groups suggested that the entire section should be removed from the proposed rule, and that the Department should conduct environmental analyses pursuant to CEQ regulations. One individual stated ''NEPA is intended to ensure that bureaus make sound decisions informed by the ''cumulative and incremental environmental impacts'' of the proposed projects and how those impacts will actually affect the environment.'' Several groups stated that vague language for past actions to be included in cumulative impact analysis will result in more confusion and litigation.

Response: At section 46.115, this final rule incorporates guidance on the analysis of past actions from the June 24, 2005 CEQ *Guidance on the Consideration of Past Actions in Cumulative Effects Analysis,* which may be found at *http://ceq.eh.doe.gov/nepa/regs/Guidance_on_CE.pdf.* This section is consistent with existing CEQ regulations, which use the terms ''effects'' and ''impacts'' synonymously and define cumulative impact as ''the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions'' (40 CFR 1508.7).

The focus of the CEQ guidance incorporated in this final rule is on the consideration of useful and relevant information related to past actions when determining the cumulative effects of proposals and alternatives. Bureaus will conduct cumulative effects analyses necessary to inform decision-making and disclose environmental effects in compliance with NEPA. A ''significant cause-and-effect'' filter is specifically provided for in the CEQ guidance.

To clarify the Department's commitment to follow CEQ guidance concerning consideration of past actions, the final rule at section 46.115 is revised to state, ''When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with 40 CFR 1508.7 and in accordance with relevant guidance issued by the Council on Environmental Quality, such as 'The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis' dated June 24, 2005, or any superseding Council on Environmental Quality guidance.'' The Department believes that by incorporating CEQ's guidance we have included sufficient specificity in the rule; any other ''how to'' information may be provided through the Departmental chapters in the DM, environmental statement memoranda series, or bureau-specific explanatory and informational directives.

Comment: Groups expressed concern over the definition of ''reasonably foreseeable future actions'' and suggested this definition should be removed from the final proposal. They understood that the Department cannot conduct a ''crystal ball'' analysis but that actions should be considered in the analysis even if decisions and funding for specific future proposals does not exist.

Response: The Department agrees. In response, the Department has added specificity and provided guidance on what should be considered a reasonably foreseeable future action in order to ensure that speculative activities or actions are not incorporated into the analysis while actions that may inform the RO's analysis of cumulative impacts for the proposed action are included, even if they are not yet funded, proposed, or the subject of a decision identified by the bureau. This approach is consistent with CEQ regulations.

Section 46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations. This section explains how to incorporate existing environmental analysis previously prepared pursuant to NEPA and the CEQ regulations into the analysis being prepared.

Comment: Several individuals agreed that using existing documentation will reduce lengthy analysis and duplication of work and applaud the Department for including this section in the proposed rule. However, commenters would like a provision added to the section to ensure the supporting documentation is provided to the public online and in the bureau's office.

Response: The Department agrees that any information relied upon in a NEPA analysis should be publicly available, either independently or in connection with the specific proposed action at

issue, and has so stated in section 46.135.

Section 46.125 Incomplete or unavailable information. CEQ regulations at 40 CFR 1502.22 provide ''When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking'' and sets out steps that agencies must follow in these circumstances. This section clarifies that the overall costs of obtaining information referred to in 40 CFR 1502.22 are not limited to the estimated monetary cost of obtaining information unavailable at the time of the EIS, but can include other costs such as social costs that are more difficult to monetize. Specifically, the Department requested comments on whether to provide guidance on how to incorporate non-monetized social costs into its determination of whether the costs of incomplete or unavailable information are exorbitant. The Department also requested comments on what non-monetized social costs might be appropriate to include in this determination; *e.g.*, social-economic and environmental (including biological) costs of delay in fire risk assessments for high risk fire-prone areas.

Comment: Many commenters expressed concern with the incomplete or unavailable information section. They stated that the rule does not provide guidance to bureaus on how to address ''non-monetized social costs.'' Some individuals stated that critical information is missing from this section, such as an exclusive list of non-monetized social costs. Several groups suggested the Department expand on CEQ regulation section 1502.22 which addresses agency procedure in the face of incomplete or unavailable information. Groups stated that the Department should ''direct its bureaus to specifically evaluate the risks of proceeding without relevant information, including risks to sensitive resources.'' Some suggested the Department provide their findings to the public so the public can provide meaningful comment and scrutiny. They stated that this approach would be more consistent with case law and with CEQ regulations. Groups stated that if the section remains ''as is,'' the Department has provided ''the bureaus with an incentive to cease collecting information and providing it to the public.'' One group stated that the proposed rule encourages agencies to find reasons not to obtain information that they have already acknowledged is relevant to reasonably foreseeable significant impacts and that this message is contrary to NEPA and CEQ regulations. Several other commenters noted that the proposed rule provides clarity in assessing the monetary costs of gathering information and is consistent with CEQ regulations.

Response: The Department believes that section 46.125 provides guidance sufficient to implement 40 CFR 1502.22 in so far as CEQ's regulation addresses this issue of costs. The Department has added some language in response to comments regarding what sorts of considerations constitute ''non-monetized social costs.'' However, the Department believes that other factors that may need to be weighed include the risk of undesirable outcomes in circumstances where information is insufficient or incomplete. Paragraph 1502.22(b) specifically provides for the steps the Department will take if the overall cost of obtaining the data is exorbitant or the means to obtain the data are not known.

Comment: One commenter suggested that the Department must ''utiliz[e] public comment and the best available scientific information'' and recommended including a provision to this effect in the final rule.

Response: There is no question that public involvement is an integral part of the NEPA process and can take a variety of forms, depending on the nature of the proposed action and the environmental document being prepared; therefore the final rule includes several provisions addressing public involvement. There is, however, some level of confusion regarding the data standard applicable to the type of information NEPA requires. The assertion is frequently made in court cases, as the commenter suggests here, that NEPA analyses must use the ''best available science'' to support their conclusions. In fact, the ''best available science'' standard comes from section 7 of the Endangered Species Act, specifically 16 U.S.C. 1536(a)(2), which requires that ''each agency shall use the best scientific and commercial data available'' when evaluating a proposed action's impact on an endangered species. In addition, the ''best available science'' standard is used by the United States Department of Agriculture Forest Service's regulations implementing the National Forest Management Act of 1976, 16 U.S.C. 1600 *et seq.* (see Final Rule and Record of Decision, National Forest System Land Management Planning Part III, 73 Fed. Reg. 21468 (Apr. 21, 2008) (to be codified at 36 CFR Part 219)). NEPA imposes a different standard: rather than insisting on the best scientific information available, CEQ regulations demand information of ''high quality'' and professional integrity. 40 CFR 1500.1, 1502.24. Therefore, the Department declines to accept the commenter's recommendation.

Section 46.130 Mitigation measures in analyses. This section has been clarified from the proposed rule. The revision clarifies how mitigation measures and environmental best management practices are to be incorporated into and analyzed as part of the proposed action and its alternatives.

Comment: Most individuals stated that the Department should address mitigation measures in the proposed rule. These individuals explained that, in order to provide interested parties an accurate portrayal of potential effects, it is necessary to include all mitigation measures in the impacts analysis. Several individuals indicate the language in the proposed rule is broad and unclear. Several groups opposed the proposed rule in its current form and suggested that the Department should revise and narrow the rule to ''clarify that possible mitigation measures are discussed in NEPA documents in order to help inform an agency's decision, but reflect the well-settled legal principle that the agency need not guarantee that particular mitigation measures be implemented or that such mitigation measures be successful.'' One group suggested that the Department revise the proposed rule to clarify that NEPA does not require agencies to adopt particular mitigation measures or to guarantee the success of the mitigation plans. One group stated that avoiding significant environmental effects should be the primary goal in the development of any proposed action and mitigation should be a final course of action when all other attempts to avoid impacts have been exhausted.

Response: The Department agrees with the comments about the importance of mitigation; the provision addressing mitigation is carried forward into this final rule. The Department has, however, refined the language of the provision for clarity. The Department agrees that NEPA does not require bureaus to adopt particular mitigation measures and that it is not possible to guarantee the success of mitigation plans, but does not believe revision to the final rule reflecting this understanding is necessary.

Comment: One group argued that including mitigation measures in the effects analysis is crucial to demonstrate that potential effects can be mitigated through the use of stipulations,

conditions of approval, and best management practices. They did not believe it necessary to ''strip'' mitigation measures or best management practices from an applicant's proposal just for the sake of analyzing the stripped down version.

Response: It was not the Department's intent that applicants' proposals be stripped of all best management practices or mitigation measures. The Department has included language to clarify this point. Independent of NEPA, any application must provide a proposal that includes any ameliorative design elements (for example, stipulations, conditions, or best management practices) required to make that proposal conform to legal requirements. In addition, the applicant's proposal presented to the bureau for decision-making will include any voluntary ameliorative design element(s) that are part of the applicant's proposal. Therefore, the analysis of the applicant's proposal, as an alternative, includes, and does not strip out, these elements. Should the bureau wish to consider and/or require any additional mitigation measures other than the design elements included in the applicant's proposal, the effects of such mitigation measures must also be analyzed. This analysis can be structured as a matter of consideration of alternatives to approving the applicant's proposal or as separate mitigation measures to be imposed on any alternative selected for implementation.

Section 46.135 Incorporation of referenced documents into NEPA analysis. This section establishes procedures for incorporating referenced documents as provided for in the CEQ regulations at 40 CFR 1502.21.

No comments were received on this section, but clarifying changes have been made in this final rule.

Section 46.140 Using tiered documents. This section clarifies the use of tiering. As contemplated in the preamble to the rule, and in response to favorable comments, the Department has added a new subsection clarifying that an environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. The finding of no significant impact, in such circumstances, would be, in effect, a finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered. The finding of no significant impact in these circumstances may also be called a ''finding of no *new* significant impact.'' In addition, the provision requiring bureaus to review existing directives addressing tiering, and listing topics that must be included in such directives has been removed from the final rule as not appropriate for regulatory treatment. The numbering of the subsections has been adjusted accordingly.

Comment: One group supported using existing analyses to avoid duplication of effort and to minimize costs. However, they stated that the Department should clearly indicate that existing data does not need to be supplemented with new data if there is no evidence that the current conditions differ from the conditions in which the existing data was developed.

Response: The Department concurs with the comment, but believes that it has been addressed in paragraph 46.140(a). As contemplated in the preamble to the rule, and in response to favorable comments, the Department has added a new paragraph 46.140(c).

Section 46.145 Using adaptive management. This section incorporates adaptive management as part of the NEPA planning process.

Comment: Most commenters supported the concept of adaptive management. However, they stated that the Department has not clearly explained how adaptive management will be incorporated into the NEPA process. One individual believed adaptive management could be a useful tool in allowing ''mid-course corrections'' without requiring new or supplemental NEPA review. Several groups suggest that the Department clarify that adaptive management is only appropriate where risk of failure will not cause harm to sensitive resources. Also, they stated that a requirement for a sufficient inventory of current conditions of affected resources should be included in the adaptive management plan. A detailed monitoring plan should be developed with specific indicators that will serve to define the limits of acceptable change. They also requested a ''fallback'' plan, which would be implemented if adaptive management, monitoring, or funding is not available. Several commenters suggested the Department include sufficient detail and commitments as to how impacts will be measured, avoided, and mitigated. They urged the Department to make this plan available for public comment. Another group suggested that the Department clearly delineate the scope, duration, and availability of funding for any planned monitoring programs before they are implemented. One individual suggested that the Department include additional detail that will clarify how and when it is appropriate to evaluate the effects of adaptive management in subsequent NEPA analysis. Another commenter suggests the Department develop a manual to demonstrate to managers circumstances where adaptive management has worked on-the-ground.

Many groups were concerned that adaptive management is a costly practice and will result in accruing additional costs for project proponents. One group was concerned that lack of information may be used to excuse and allow actions to proceed without sufficient protective measures in place. Some commenters expressed concern that it would be impossible to adequately analyze impacts of adaptive management ''since those actions rely on future conditions that could be complicated and cumulative.'' Modifications to requirements and conclusions in decision documents must be allowed to ensure appropriate adjustments to management actions, according to one group. One commenter was concerned that the Department may misuse adaptive management with regard to on-the-ground monitoring due to lack of funding. Another group suggested the project proponent should play a role in defining the adaptive management strategy and ensuring funding will be available. They also suggested the Department clarify that public involvement is welcome but adaptive management strategies and implementation are the full responsibility of the agency.

Groups questioned adaptive management's consistency with current case law, NEPA, and CEQ regulations. Several commenters suggested that this section should be eliminated due to its inconsistencies with NEPA and CEQ. Due to lack of CEQ framework and no guidance for implementation, one group suggested that the Department should remove this section from the proposed rule.

Response: The Department has made minor wording changes to this section. Adaptive Management (AM) is an approach to management; however, it can be integrated with the NEPA process. The establishment of specific provisions with respect to the use of AM

is beyond the scope of this rule. The intent of this provision is only to clarify that the use of an AM approach is not inconsistent with NEPA. That is, proposed actions must be analyzed under NEPA. Each proposed action, including possible changes in management resulting from an AM approach, may be analyzed at the outset of the process, or these changes in management may be analyzed when actually implemented.

Section 46.150 Emergency responses. This section clarifies that ROs, in response to the immediate effects of emergencies, can take immediate actions necessary to mitigate harm to life, property, or important resources without complying with the procedural requirements of NEPA, the CEQ regulations, or this rule. Furthermore, ROs can take urgent actions to respond to the immediate effects of an emergency when there is not sufficient time to comply with the procedural requirements of NEPA, the CEQ regulations, or this rule by consulting with the Department (and CEQ in cases where the response action is expected to have significant environmental impacts) about alternative arrangements.

Comment: Some commenters expressed concern regarding the broad definitions provided in the emergency response section. They stated the section is ''written too broadly and could potentially lead to the misuse of the provision that would allow a bureau to bypass the preparation of an environmental document.'' One group objected to the lack of specificity in terms provided in this section, such as ''emergency,'' ''emergency actions,'' ''immediate impact,'' and ''important resources,'' leaves uncertainty as to how this provision may be implemented by the Department.

Response: There is no special meaning intended for the term ''emergency'' beyond its common usage as ''an unforeseen combination of circumstances or the resulting state that calls for immediate action'' (*Webster's Third New International Dictionary Of The English Language* 1961 and *Merriam-Webster's Collegiate Dictionary* (11th ed. 2004)); ''a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action'' (*Random House Dictionary Of The English Language* (2ed. 1987)); ''a state of things unexpectedly arising, and urgently demanding immediate action'' (*The Oxford English Dictionary 2ed. 1991*) and ''[a] situation that demands unusual or immediate action and that may allow people to circumvent usual procedures * * *'' (*Black's Law Dictionary 260, 562* (8th ed. 2004)). The proposed regulation, as revised in this final rule, recognizes that responsible officials can take immediate actions to control the immediate impacts of an emergency to mitigate harm to life, property, or important natural or cultural resources.

The final rule, at section 46.150, replaces ''other important resources'' with ''important natural, cultural, or historic resources'' to more clearly identify the type of resources impacted by the emergency. The Department has not defined an emergency because it is impossible to list all circumstances that constitute an emergency; it is up to the RO to decide what constitutes an emergency.

Only such actions required to address the ''immediate impacts of the emergency that are urgently required to mitigate harm to life, property, or important natural, cultural, or historic resources'' may be taken without regard to the procedural requirements of NEPA or the CEQ regulations. Thus, there are no NEPA documentation requirements for these types of situations and the final rule requires NEPA to apply to any and all subsequent proposed actions that address the underlying emergency (paragraphs 46.150 (c) and (d)). The provisions of section 46.150 codify the existing Department practice and CEQ guidance for emergency actions.

Comment: Another group suggested that the Department add a sentence that states ''the RO shall document in writing the action taken, any mitigation, and how the action meets the requirements of this paragraph.'' Several commenters stated that this section does not comply with Congress' mandate to comply with NEPA and CEQ regulations. Several groups believed the proposed rule would allow a bureau to implement any action at any time and avoid the NEPA planning process. Others stated that the ''important resources'' clause should be removed from this section. Several commenters were concerned that the Department is implementing emergency response in order to preclude analysis of fire suppression activities.

Response: The Department agrees that the RO should document the determination of an emergency and have modified the final rule to require this. The Department will continue to act to protect lives, property, and important natural, cultural, or historic resources through means including the use of fire suppression. The Department notes that fire suppression alternatives are addressed in plans that are subject to NEPA analysis.

Section 46.155 Consultation, coordination, and cooperation with other agencies. This section describes the use of procedures to consult, coordinate, and cooperate with relevant State, local, and tribal governments, other bureaus, and Federal agencies concerning the environmental effects of Department plans, programs, and activities. The Department deleted the reference to organizations since this section will deal only with Federal, State, and tribal governmental entities. Material related to consensus-based management has been moved to section 46.110 in order to consolidate all provisions related to consensus-based management. Paragraph 46.155(b), directing bureaus to develop procedures to implement this section, has been deleted as not appropriate for regulatory treatment.

Comment: Many commenters supported this section and stated collaboration would benefit all interested parties.

Response: The Department appreciates the comments.

Comment: Some individuals pointed out that consensus is often unachievable and unnecessary. One group stated that the Department should put federal project reviews into a consensus building process to ensure that opinions and experience are captured in the NEPA process.

Response: Please see our response above to comments on section 46.110.

Comment: Many groups suggested the Department require bureaus to work with cooperating agencies, such as the U.S. Fish and Wildlife Service. One commenter indicated that the Department should ensure that enhanced involvement does not add unnecessary cost or burden to project proponents. They also stated that ''memorializing cooperative conservation in regulations, rather than policy guidance, will result in unnecessary burdens and litigation.''

Response: The Department requires that the RO of the lead bureau consider any request by an eligible government entity to participate in a particular EIS as a cooperating agency. The Department recognizes that an emphasis on the use of cooperating agencies may result in additional steps in the NEPA process, but is likely to lead to improved cooperative conservation and enhanced decision making. Executive Order 13352 on Facilitation of Cooperative Conservation requires all federal agencies to implement cooperative conservation in their programs and activities. Cooperative conservation is consistent with the CEQ requirement that agencies should

encourage and facilitate public involvement in the NEPA process. See 40 CFR 1500.2(d), 1506.6.

Comment: Several tribes expressed concern that the proposed rule will negate the government-to-government consultation with tribes. The tribes believed that the Department should include a provision to ensure Indian tribes are given the opportunity to fully participate in the NEPA process and address concerns that are unique to each action.

Response: See our response above with respect to government-to-government consultation under section 46.110.

Section 46.160 Limitations on actions during the NEPA analysis process. This section incorporates guidance to aid in fulfilling the requirements of 40 CFR 1506.1.

Comment: Several individuals agreed with the proposed rule and believe there is legal authority to support this section. One individual suggested that the Department should address actions that can be taken while a ''project'' is underway, specifically ''actions taken by a private project applicant that are outside the jurisdiction of the bureau are not an irreversible or irretrievable commitment of agency resources.'' They suggested the Department add a provision to this section to clarify the Department's commitment to projects. Although the direction is clear in the provision, one group stated bureau field offices are not adhering to this policy and that an additional provision should be added to this section regarding the use of existing NEPA documents for major federal actions. Another group wanted the Department to add an additional sentence clarifying that a particular action must be justified independently of the program and will not prejudice the ultimate decision of the proposed program.

Response: The Department appreciates the support expressed for this provision. The Department believes that this provision is clear and consistent with 40 CFR 1506.1 and does not believe any additional statement to this effect need be added to the final rule. The requested addition is not required because the provision here at section 46.160 only addresses situations where the major Federal action is within the scope of and analyzed in an existing NEPA document supporting the current plan or program. With respect to current practice within the Department, as explained in the preamble to the proposed rule, see 73 FR 126 (Jan. 2, 2008), the Department believes that one of the benefits of establishing this final rule is greater transparency in the NEPA process. Such transparency is likely to improve consistency of implementation across the Department, as well.

Section 46.165 Ensuring public involvement. This section has been removed from the final rule. CEQ regulations include requirements for public involvement in the preparation of an EIS. Section 46.305 of this final rule addresses public involvement in the EA process. The requirement in paragraph 46.305(a), that the bureau must, to the extent practicable, provide for public notification and public involvement when an EA is being prepared, includes an element of timeliness. The RO has the discretion to choose method(s) of public notification and public involvement that ensure that, if practicable, the public receives timely information on the proposed action.

Comment: One commenter stated that this provision does not provide clarity in the role of public participation. They suggested the Department add additional language to explain the timing, processes and opportunities this provision will provide.

Response: CEQ regulations implementing NEPA direct agencies to encourage and facilitate public involvement in the NEPA process ''to the fullest extent possible.'' 40 CFR 1500.2(d); see also 40 CFR 1506.6. Bureaus conduct a wide variety of actions under various conditions and circumstances. Therefore, the Department has determined that the best approach is for individual bureaus to provide direction as to how ROs should exercise their discretion in ensuring that this involvement takes place in a manner practicable in the particular circumstances of each proposed action, but that it is not appropriate to provide specifics as to how this should occur in this final rule. The Department has provided some information regarding public involvement in ESM 03–4 and may address this topic in future ESMs.

Section 46.170 Environmental effects abroad of major Federal actions. This section describes procedures the bureaus must follow in implementing EO 12114, which ''represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.''

No comments were received on this provision.

Subpart C: Initiating the NEPA Process

In the conversion from 516 DM 2 to 43 CFR Part 46, Subpart C, we have restructured the Department's requirements for initiating the NEPA process. We have put into regulations the essential parts of the NEPA process that are unique to the Department and which require further clarification of the CEQ regulations. This rule clarifies the requirements for applying NEPA early, using categorical exclusions (CEs), designating lead agencies, determining eligible cooperating agencies, implementing the Department's scoping process, and adhering to time limits for the NEPA process.

Section 46.200 Applying NEPA early. This section emphasizes early consultation and coordination with Federal, State, local, and tribal entities and with those persons or organizations who may be interested or affected whenever practical and feasible. A new paragraph 46.200(e) has been added to clarify that bureaus must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals. Any cost estimates provided to applicants are not binding upon the bureau. This provision had already been included with respect to the preparation of EISs, but should also have been included with respect to EAs. Therefore, the provision has been moved from 46.400 (EISs) to 46.200.

Comment: Some commenters supported this section of the proposed rule as it is currently written.

Response: The Department appreciates the comments.

Comment: Some commenters stated that the proposed rule is not clear with respect to how community-based training will be conducted and what the content of the training will include. These commenters suggested the proposed rule should provide a detailed discussion of the purpose of such training, as well as when it is warranted.

Response: The Department has determined that this topic is most appropriately addressed in the environmental statement memoranda. Community-based training, including the content of the training, is included in ESM03–7 and, if appropriate, will be expanded in future ESMs or bureau-specific explanatory and informational directives. No change to the proposed rule has been made.

Comment: Some commenters also recommended that the proposed rule should clarify that it does not expand the amount of information required for applications under the relevant substantive statute.

Response: The final rule does not expand the amount of information required beyond what is required by NEPA and CEQ regulations, which may be more than the information required for applications under the relevant substantive statute. This provision simply provides that the bureaus be forthcoming with descriptions of information that the applicant may need.

Comment: A few commenters stated that public involvement should be limited to submitting comments on the scoping notice, attending public meetings, and submitting comments on the final version of draft NEPA documents. Various commenters suggest that the proposed rule require early consultation with applicants. Others proposed additional changes to the proposed rule to further facilitate early coordination between the Department and applicants. These commenters recommended that the proposed rule distinguish between public involvement in the EA process and the EIS process.

Response: As noted above, CEQ regulations implementing NEPA direct agencies to encourage and facilitate public involvement in the NEPA process ''to the fullest extent possible.'' 40 CFR 1500.2(d); see also 40 CFR 1506.6. The Department is encouraging enhanced public involvement and broad-based environmental coordination early in the NEPA process. The purpose is to facilitate better outcomes by encouraging dialogue among the affected parties. Public involvement is encouraged during the EA and EIS process. CEQ regulations prescribe the manner in which the minimum level of public involvement must be carried out under the EIS process; the manner of conducting public involvement in the EA process is left to the discretion of RO.

Section 46.205 Actions categorically excluded from further NEPA review. This section provides Department-specific guidance on the use of categorical exclusions.

Comment: Many commenters supported this section of the proposed rule as it is currently written. These commenters supported the position that NEPA does not ''apply to statutorily created categorical exclusions,'' such as those created by Congress in 2005.

Response: The Department concurs that legislation governs the application of statutory categorical exclusions. For example, the Energy Policy Act of 2005 (EPAct) establishes how NEPA applies with respect to these categorical exclusions.

Comment: Several groups suggested that the Department ''ensure that its bureaus involve the public in the development and application of CEs and clearly state that extraordinary circumstances need to be provided for unless Congress specifically exempts an agency from doing so.'' These groups maintained that CE disagreements could be reduced through greater transparency in their application. Some of these comments recommended the deletion of paragraph 46.205(d) from the proposed rule. Overall, commenters generally believed it is important to articulate the extraordinary circumstance under which a CE will not apply.

Response: As noted above, CEQ regulations include specific requirements for the establishment of procedures, including CEs, for implementing NEPA. When established as part of the DM, the categories listed in the final rule and the extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3, by publication in the **Federal Register**, March 8, 2004 (69 FR 10866). The final CEs, as originally published in the DM, and as presented in this final rule, were developed based on a consideration of those comments. The Department has provided for extraordinary circumstances in the application of its CEs. Each bureau has a process whereby proposed actions are evaluated for whether particular CEs are applicable including whether extraordinary circumstances exist. As noted above, part of the Department's intent in publishing its NEPA procedures as regulations is to increase transparency in their implementation.

By moving its NEPA procedures, including CEs and the listing of extraordinary circumstances from the DM to regulations, the Department does not intend to alter the substance of these CEs or extraordinary circumstances. In paragraph 46.205(d) the Department is merely acknowledging the fact that Congress may establish CEs by legislation, in which case the terms of the legislation determine how to apply those CEs.

Section 46.210 Listing of Departmental Categorical Exclusions. This section includes a listing of the Department's CEs (currently 516 DM Chapter 2, Appendix B–1). The CEs are in paragraphs (a) through (l). These CEs were all published for public comment prior to inclusion in the DM. This section includes the same number of CEs as were in the DM and the wording in the CEs is unchanged, with five exceptions. Four of those changes are made between the rule as proposed and final because of minor editorial changes from how the categorical exclusions appeared in the DM.

First, § 46.210(b) has been revised from ''Internal organizational changes and facility and office reductions and closings'' as it appeared in the DM to ''Internal organizational changes and facility and bureau reductions and closings'' to conform to the definition of ''bureau'' in the final rule, at § 46.30, which includes ''office.'' The DM had not provided a definition of ''bureau'' and so used both ''bureau'' and ''office.'' Second, the word ''development'' was inadvertently added, so that the parenthetical in the proposed rule at § 46.210(c) read ''(*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable development or green procurement).'' This change has been deleted from this final rule.

Third, the numbering system has been changed in the CE § 46.210(k) from the DM, originally published as final on June 5, 2003 (68 FR 33814), in order to more clearly set out the requirements for use of the CE for hazardous fuels reduction activities. The meaning of the CE has not changed. And fourth, in paragraphs 46.210(k) and (l), the citations to the ESM series, which appeared in parentheticals in the DM, but as footnotes in the Notice published on March 8, 2004 (69 FR 10866), have been placed in the text itself for ease of reference.

Finally, paragraph 46.210(i), which replaces 516 DM Chapter 2, Appendix B–1, Number 1.10, has been changed to correct an error during the finalization of the revision to these DM chapters in 2004. Prior to 1984, and up until 2004, this CE, as established and employed by the Department, covered ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' 49 FR 21437 (May 21, 1984); 516 DM 2, Appendix 1 (June 30, 2003) (Archived versions of 516 DM chapters, including the 1984, 2003, and 2004 versions of 516 DM 2, may be accessed at *http://elips.doi.gov/app_dm/index.cfm?fuseaction=ShowArchive*). No problems with the use of the CE were brought to the attention of the Department during this period. It is the version of the CE that was in place prior to 2004 that was proposed in the Department's January 2, 2008 Notice of Proposed Rulemaking (73 FR 126, 130), and is announced as final in the rule published today.

From 2004, however, a slightly different version of the CE appeared in the DM chapters. In 2000, the Department proposed revisions to 516 DM, including 516 DM 2. 65 FR 52212, 52215 (Aug. 28, 2000). No change was proposed to this CE at that time, and no comments were received regarding this CE. No further action was taken on the 2000 proposal until 2003, when the Department again published the proposed revision to the 516 DM chapters at issue; however, as proposed this revision included an erroneous change to this CE. 68 FR 52595 (Sept. 4, 2003). No comments were received regarding this CE in response to the 2003 Notice. As a result, although no change had been intended, the following version was published as final in 2004 (69 FR 10866, 10877–78 (Mar. 8, 2004)), and incorporated into 516 DM 2, Appendix 1.10: ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.''

As noted in the preamble to the proposed rule, published January 2, 2008 (73 FR 126, 130), the Department is correcting an unintended drafting error in the 2004 Rule. The text which previously described two categories of policies, directives, regulations and guidelines (''* * * that are of an administrative, financial, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process * * *''), was replaced with a more restrictive category of policies, directives, regulations and guidelines (''* * * that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process * * *''). During the Departmental review beginning in 2006, in preparation for this rulemaking, the Department discovered the drafting error that infected both the 2003 proposal and the 2004 final revision to the DM. This error has made it difficult to use the CE as originally intended, and has engendered confusion in the Department. It is now clear that the erroneous version that became final in 2004, though inadvertent, had resulted in a substantive difference in meaning. For example, the use of the word ''and'' made it difficult to apply the CE to an agency action, such as a procedural rule, that has no individual or cumulative significant environmental effects. With the correction effectuated by this 2008 rulemaking (no comments were received with respect to this proposed correction), this CE has now been replaced with its original version. As such, actions such as procedural rules with no individual or cumulative significant environmental effects are covered by the categorical exclusion, as well as circumstances where the action will later be subject to NEPA compliance.

Comment: One commenter stated that the bureau-specific CEs should be included in the proposed rule. Comments also suggest the addition of a new category in the proposed rule which allows the bureaus the discretion to establish other Departmental CEs which are consistent with 43 CFR 46.205. One group suggests revising the proposed rule to cross-reference bureau-specific CEs. This group maintained that this cross-reference will provide better information for the public, as well as promote greater transparency in the NEPA process.

Response: Bureau specific CEs are listed separately in the 516 DM Chapters 8–15 to reflect bureau specific mission and activities. Those DM Chapters remain in effect. Bureaus have specific resource management and environmental conservation responsibilities and their CEs are tailored to these unique missions and mandates. The Departmental CEs are general and are applicable throughout the Department and across all bureaus. Bureaus have the discretion to propose additional CEs that apply in a bureau specific context and which are included in the bureau specific chapters of the DM. If appropriate, bureaus can also propose to the Department additional CEs to augment those already in this rule for future consideration. Such additional proposed CEs would have to be consistent with the broad nature of the already existing Departmental CEs. Cross referencing is unnecessary because bureau specific CEs are unique to that particular bureau and do not apply to other bureaus.

Comment: Several groups cited 40 CFR 1508.27(b), and stated that the Department ''must also perform a cumulative effects analysis prior to promulgation of the CE.'' These groups stated that impacts analysis at the project level does not relieve the Department from the obligation to ensure that the CE has no cumulative impacts. These groups were concerned that the proposed rule on CEs does not comply with NEPA requirements and would violate recent court rulings.

Response: The requirements for establishing agency procedures for implementing NEPA—such as the procedures set forth in this rule, and including CEs—are set forth in CEQ's regulations at 40 CFR 1505.1 and 1507.3. These provisions require agencies to consult with CEQ while developing procedures and to publish the procedures in the **Federal Register** for public comment prior to adoption. The CEQ regulations do not direct agencies to prepare a NEPA analysis or document before establishing agency NEPA procedures. This means that agencies are not required to prepare a NEPA analysis to establish their NEPA procedures; however, agencies must have a basis for determining that actions covered by proposed CEs do not have individual or cumulative impacts.

Agency NEPA procedures assist agencies in fulfilling agency responsibilities under NEPA and are not, themselves, actions or programs that may have effects on the human environment. Moreover, agency NEPA procedures do not dictate what level of NEPA analysis is required for a particular proposed action or program. Thus, such procedures are not federal actions subject to the requirements of NEPA. The determination that establishing agency NEPA procedures does not itself require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), *aff'd* 230 F.3d 947, 954–55 (7th Cir. 2000).

By including the Department's CEs in this rule, the Department is merely moving established categories and language addressing extraordinary circumstances from their current location in the DM to the new 43 CFR Part 46. When established as part of the DM, these categories and extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3. The substantiation for those actions included the bases for determining that the actions covered by the CE do not ''individually or cumulatively have a significant effect on the human environment.''(40 CFR 1508.4). This final rule does not add any new categories or—apart from one clarifying addition (explained below)—alter existing language regarding extraordinary circumstances. Therefore, the Department does not believe that this final rule fails to comply with NEPA or the CEQ regulations and believes that the existing procedural

framework established by the statute, CEQ regulations, and existing Department procedures is maintained.

In *Sierra Club* v. *Bosworth,* 2007 U.S. App. LEXIS 28013 (9th Cir., Dec. 5, 2007), the case cited by commenters, the Ninth Circuit determined, in part, that the U.S. Forest Service's establishment of a CE constituted establishment of a program for which a cumulative effects analysis was required. Because this litigation involves a CE that is analogous to a CE used by the Department, the Department has determined that the category in question will remain in the final rule, with the understanding and written direction that it will not be used by the individual bureaus in areas within the jurisdiction of the Ninth Circuit. If, at a later date, the Department determines changes must be made to sections 210 and 215 of part 46, those changes will similarly undergo CEQ review as well as public review and comment. Further, in such event, the Department will comply with all applicable requirements for rulemaking.

Comment: Some groups also suggested that this section of the proposed rule is ''extremely vague and broad.'' These commenters recommended removal of, or expanded limits on, the portions of the CE that authorize mechanical treatment to reduce fuels, as well as those portions which authorize post-fire rehabilitation. Commenters maintain that the allowance of these authorizations would be ''environmentally disastrous.'' Furthermore, these groups recommended implementation of strict measures to ensure that ''temporary roads'' remain temporary.

Response: As explained above, by including the Department's CEs in this rule, the Department is merely moving established categories and language addressing extraordinary circumstances from their current location in the DM to the new 43 CFR Part 46. When established as part of the DM, these categories and extraordinary circumstances language were approved by CEQ and subject to public review and comment, in accordance with 40 CFR 1507.3 (for example, see 68 **Federal Register** 33813 published on June 5, 2003). This final rule does not add any new categories or alter existing language regarding extraordinary circumstances, with the exceptions noted above with respect to the language of the CEs, including the correction of the typographical error in paragraph 46.210(i) and the clarification in section 46.215 noted below.

Comment: Some commenters suggested modification of the proposed rule in such a way that the collection of small samples for mineral assessments be included within educational CEs. Other commenters recommended the proposed rule be modified to incorporate CEs for the Fish and Wildlife Service. Another commenter recommended that the Department adopt its own CE relating to the installation, maintenance, or restoration of artificial water developments used in the conservation of wildlife. In addition, this commenter suggests clearly defining small water control structures in the proposed rule.

Response: See responses above.

Section 46.215 Categorical Exclusions: Extraordinary circumstances. This section contains a listing of the Department's CEs: Extraordinary Circumstances (currently 516 DM Chapter 2, Appendix B–2). This section includes the same number of CEs: Extraordinary Circumstances as were in the DM, and the wording in the CEs: Extraordinary Circumstances is essentially unchanged. Similar to the listing of CEs, each of the Extraordinary Circumstances was published for public comment prior to inclusion in the DM. The CEs: Extraordinary Circumstances are in paragraphs (a) through (l). In the proposed rule, and in this final rule, the only change from the way the Extraordinary Circumstances appeared in the DM is the addition of the following sentence to section 46.215: ''Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.'' This is not a substantive change to the extraordinary circumstances themselves, but reflects the authority and the responsibility of the RO. Similarly, the phrase ''as determined by the bureau'' (which appears in the DM) was inadvertently left out of the proposed rule at paragraph 46.215(g); the final rule therefore reads: ''Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.'' While the DM provision (*see* 69 FR 19866, Mar. 8, 2004) that is being replaced by this rule read ''as determined by either the bureau or office,'' only ''bureau'' is used here, to be consistent with the definition of ''bureau'' in the final rule, at section 46.30.

Comment: Another commenter believed that the Executive Order on Facilitation of Hunting Heritage and Wildlife Conservation should form the basis of extraordinary circumstances and should be added to the proposed rule.

Response: As noted above, no new CEs or extraordinary circumstances are being added at this time. That being said, the Department is aware of the referenced Executive Order and will incorporate in Departmental directives, as appropriate, any plan developed under the Executive Order for the management of resources under the Department's jurisdiction.

Comment: Some commenters stated that lands found to have ''wilderness characteristics,'' such as citizen proposed wilderness areas, do not constitute extraordinary circumstances. Many commenters suggested that the Department revise this section of the proposed rule to clarify that the term ''highly controversial environmental effects'' does not include instances where there is merely a public controversy.

Response: The Departmental list of extraordinary circumstances specifies wilderness areas or wilderness study areas but not wilderness characteristics or citizen proposed wilderness areas. As noted above, no new extraordinary circumstances are being added as part of this initiative. That being said, just as with any other resource value, there may be circumstances where the issue of effects on areas with wilderness characteristics may be captured under the existing extraordinary circumstances.

Comment: One commenter requested, ''where an Interior agency proposes to categorically exclude a decision from review under NEPA, that the agency include the proposed decision on NEPA registers available on the agency's Web site.'' This commenter also requested eliminating the adoption of regulations and policies from the list of Departmental CEs, as found in paragraph (i).

Response: The Department declines to adopt the commenter's recommendation regarding making the proposed decisions supported by CEs available on bureau *Web site*(s). From a practical standpoint, many thousands of proposed actions annually are categorically excluded. To list each use of a CE on a NEPA register or bureaus' Web sites would prove overly burdensome. The Department declines to adopt the commenter's recommendation regarding eliminating the adoption of regulations and policies from the list of Departmental CEs, as found in paragraph (i). As explained above, the Department is not changing the language of the CEs or the extraordinary circumstances in the final rule, but is merely moving them from the DM to regulations.

Comment: Some groups stated that the proposed rule severely narrows the definition of extraordinary

circumstances. These groups also believed the proposed rule allows the Department to illegally manipulate NEPA's threshold question.

Response: This final rule simply moves established categories and language on extraordinary circumstances from the Department's NEPA procedures previously located in 516 DM 2, Appendix 1 and 2; no change was proposed or is made to the extraordinary circumstances themselves in the final rule. As noted above, these categories and requirements were established following public review and comment, in consultation with CEQ and with CEQ's concurrence, pursuant to 40 CFR 1507.3. The final rule does not add any new categories, nor does it substantively alter existing requirements regarding review for extraordinary circumstances. The Department notes that contrary to the commenter's assertion that the threshold question with respect to the extraordinary circumstances review is altered, the prefatory statement to the list of extraordinary circumstances was, and remains ''Extraordinary circumstances (see § 46.205(c)) exist for individual actions within CXs that *may* meet any of the criteria listed in paragraphs (a) through (l) of this section.'' (Emphasis added.)

Section 46.220 How to designate lead agencies. This section provides specific detail regarding the selection of lead agencies.

Comment: Some commenters stated that the proposed rule needs to address how a lead agency will be designated when more than one federal agency is involved. These commenters recommended that the Department consider requiring the consent of an agency before it can be named the lead agency. In addition, commenters suggested that the Department may want to recognize in the proposed rule that the RO would need to comply with any applicable statutory or regulatory requirements in the designation of the lead agency.

Response: CEQ regulations at 40 CFR 1501.5 establish guidelines on the designation of a lead agency, including resolution of the question of designation, in the event of dispute. The RO complies with this rule in the designation of a lead agency.

Section 46.225 How to select cooperating agencies. This section establishes procedures for selecting cooperating agencies and determining the roles of non-Federal agencies, such as tribal governments, and the further identification of eligible governmental entities for cooperating agency relationships. Criteria for identifying, and procedures for defining, the roles of cooperating agencies and the specific requirements to be carried out by cooperators in the NEPA process are set forth in this section.

Comment: Several commenters supported consensus-based management for resolving competing government interests.

Response: The Department appreciates the comments.

Comment: Some commenters suggested that lead NEPA agencies must collect the ''best available information,'' with the decision-making process based on this information. These commenters also proposed modification of the proposed rule to ''encourage'' the use of this section in preparing an EA.

Response: The Department collects the high quality information, and that information supports the NEPA analysis which contributes to the decision-making process. This is consistent with CEQ requirements. The Department declines to make the recommended change to paragraph 46.225(e); ROs are given the latitude to exercise discretion in this regard.

Comment: Many commenters supported the use of memoranda of understanding (MOU) and recommended revision of the proposed rule to include clarification on cooperating agency status and limitations, as well as a schedule for the environmental document.

Response: Paragraph 46.225(d) provides for the use of memoranda of understanding (MOU) between the lead and cooperating agencies. The MOU provides a framework for cooperating agencies to agree to their respective roles, responsibilities and limitations, including, as appropriate, target schedules. The requirement with respect to memoranda of understanding in paragraph 46.225(e) may apply to EAs also.

Section 46.230 Role of cooperating agencies in the NEPA process. This section provides specific detail regarding the responsibilities of cooperating agencies.

No comments were received for this section.

Section 46.235 NEPA scoping process. This section discusses the use of NEPA's scoping requirements to engage the public in collaboration and consultation for the purpose of identifying concerns, potential impacts, relevant effects of past actions, possible alternatives, and interdisciplinary considerations. The regulatory language encourages the use of communication methods (such as using the Internet for the publications of status of NEPA documents on bulletin boards) for a more efficient and proactive approach to scoping.

Comment: Some organizations stated that the Department has offered no explanation for the lack of required scoping when preparing an EA or applying a CE, as compared with scoping for an EIS. These organizations maintained that this lack of scoping contradicts the proposed guidance found in paragraph 46.200(b). These commenters stated that federal agencies are required to ensure proper public involvement when implementing NEPA and suggested public scoping assists in making an informed decision.

Response: Although scoping is not required for the preparation of an EA (CEQ regulations at 40 CFR 1501.7 specifically reference the preparation of an EIS), the Department encourages the use of scoping where appropriate as it does represent a form of public involvement, which is a requirement of EAs. The Department has added language to clarify the relationship between this section and section 46.305. In addition, in contrast to the rule as proposed, the Department has also clarified that while public notification and public involvement are required to the extent practicable in the preparation of an EA, the RO has the discretion to determine the manner of this public notification and public involvement. See paragraph 46.305(a). Scoping is not a step necessary to document a CE. The Department recognizes and acknowledges the importance of scoping as a form of public involvement and participation in the NEPA process, wherever it is appropriate, in that it can serve the purpose of informed decision making.

Comment: One commenter recommended clarification of ''interdisciplinary considerations'' in the proposed rule.

Response: This rule ensures that the use of the natural, social, and the environmental sciences as required under section 102(2)(A) of NEPA. As recommended by the commenter, we have clarified this provision by replacing the phrase ''interdisciplinary considerations'' in paragraph 46.235(a) with the phrase ''interdisciplinary approach'' as provided in 40 CFR 1502.6.

Section 46.240 Establishing time limits for the NEPA process. The section requires bureaus to establish time limits to make the NEPA process more efficient.

Comment: One commenter pointed out that the proposed rule does not explain why time limits should be established. This commenter recommended the addition of specific

guidance and direction to the proposed rule so bureau staff can process NEPA documents with minimal delay.

Response: CEQ regulations at 40 CFR 1501.8 encourage federal agencies to set time limits appropriate to individual actions. This rule requires individual bureaus to establish time limits, as appropriate, to expedite the NEPA process and to ensure efficiency, especially when project completion may be time sensitive or when statutory or regulatory timeframes may be applicable. The Department believes individual bureaus are best situated to establish time frames on a case-by-case basis, and does not deem it necessary to implement specific additional guidance to ensure that delays are not encountered in the NEPA process.

Comment: Another commenter stated that the proposed rule appears to be focused solely on internal administrative factors and fails to acknowledge that complex projects and potential impacts could seriously affect timelines. Commenters also suggested that the availability of the public to participate in the process needs to be considered and accounted for when setting time limits. Multiple commenters supported establishing time limits for the NEPA process on a case-by-case basis, as long as the time limits do not impose a schedule that cannot facilitate the project proponent's goals and objectives for the proposed action.

Response: The Department does not have a prescribed time limit for each proposed step in the NEPA process. In each case, time limits are set based on a consideration of factors such as funding, staff availability, public needs, and the complexity of the proposed action. The Department realizes that the proponent's goals and objectives are a consideration in scheduling the time considerations, as well as the factors mentioned above.

Comment: Several commenters requested an addition to the proposed rule ''that cooperating agencies represent that they have sufficient qualified staff and necessary resources to participate as a cooperating agency on the project and meet project deadlines.'' Several commenters also recommended several additions to the proposed rule to strengthen time limit requirements.

Response: The MOU as required under paragraph 46.225(d) is a mechanism for establishing that such cooperating agencies represent that they have sufficient qualified staff to participate on the project and meet project deadlines. The Department does not believe any change to the final rule is necessary.

Subpart D: Environmental Assessments

In the conversion from 516 DM Chapter 3 to 43 Part 46 Subpart D, we have written this rule to incorporate procedural changes, expand upon existing procedures, give greater discretion and responsibilities to bureaus, and provide clarity in the EA process.

Section 46.300 Purpose of an EA and when it must be prepared. This section clarifies that the action being analyzed is a ''proposed'' action. It expands upon the purpose and clarifies when to prepare an EA.

Comment: One group recommended that the Department add a provision to assure that all decisions made by the RO after preparing an EA or an EA and FONSI are in writing and include the Official's reasoning behind that decision.

Response: This rule addresses the Department's NEPA procedures and not the Department's decision-making authorities. The Department has decided that documentation requirements for decisions on proposed actions made on the basis of preparation of EAs and FONSIs are outside the scope of this rule. That is, bureau decision making itself is governed by Department and bureau-specific authorities. Section 46.325 describes the culmination of the EA process rather than documentation of a final decision on the proposed action and has been edited to ensure this point is clearly made.

Comment: Another group stated that wording in paragraph (a), in the context of the Bureau of Indian Affairs, may be misleading since many EAs are prepared by a tribal government agency. These commenters suggested that paragraph (a) be revised as follows: ''A bureau must ensure that an EA is prepared for all proposed Federal actions * * *''

Response: The Department concurs and has revised the language at paragraph 46.300(a) to reflect the suggested change.

Section 46.305 Public involvement in the EA process. This section incorporates procedural changes and differentiates the requirements for public involvement in the EA and EIS processes. This section has been revised from the proposed to require bureaus, to the extent practicable, to provide for public notification and public involvement when an environmental assessment is being prepared. This represents a change from the rule as proposed, which had included a requirement that ''The bureau must provide for public notification when an EA is being prepared.'' The Department has made this change in order to be more consistent with CEQ regulations, which do not require bureaus to provide such notice in each and every instance, but only require that Federal agencies ''shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the quality of the human environment.'' 40 CFR 1500.2(d). With respect to EAs, CEQ regulations require that agencies provide notice of the availability of such environmental documents, but are otherwise quite general in approach to public involvement in EAs. *See* 40 CFR 1501.4(b) and 1506.6. As the Department's bureaus prepare thousands of EAs each year—many times for routine matters for which there are not categorical exclusions, but for which there is no interest on the part of the public—a categorical public notification requirement would prove a fairly substantial burden. Therefore, discretion is left to the RO in each case to determine how best to involve the public in a decision that affects the quality of the human environment.

This section has also been expanded to give bureaus the discretion to provide cooperating agency status for EAs. It specifies that the publication of a draft EA for public comment is one method available for public involvement, but it is not required.

Comment: Some commenters supported this section of the proposed rule as it is currently written. These commenters believed that the proposed rule is consistent with CEQ regulations, which only require public involvement in EAs to the extent practicable.

Response: The Department appreciates the comments and has clarified that because notification is a means of public involvement, it too is subject to the qualifier ''practicable'' and has revised the final rule as described above.

Comment: This section of the proposed rule directs bureaus to consider comments that are ''timely'' received. One commenter maintained that the proposed rule did not adequately define ''timely.'' This commenter also recommended stating in the rule ''that if no comments are received during this 30-day comment period, the decision is made using the content of the draft document.''

Response: Publication of a ''draft'' EA is not required. The RO has the discretion whether to invite comments on an EA. If an RO requests comments, there will be a stated time limit to the comment period. Comments not received within this stated time limit may be deemed untimely by the RO. It

is left to the discretion of the RO to take action when comments have been received after the end of the comment period.

Comment: Several commenters also supported the proposed provision which would allow cooperating agencies to participate in the development of EAs. They recommended rewording of the proposed rule to ''encourage'' cooperating agency participation, not merely ''permit'' this participation.

Response: The rule has used ''may allow'' rather than the term ''encourage,'' because cooperating agency involvement in an EA is a matter of discretion for the RO; no change is made to the final rule.

Comment: Many commenters supported publication of draft EAs and recommended modification of the proposed rule to support publication of draft EAs. These commenters believed that this section of the proposed rule is in violation of CEQ direction and that public review of environmental documents has the potential to identify information about impacts or resource uses that would be otherwise unknown.

Response: The manner of public involvement, including the publication of a draft EA, is a matter of discretion for the RO; this provision is consistent with 40 CFR 1501.3.

Comment: Several commenters expressed disappointment that ''the language in the Department's NEPA proposed rule focuses on how not to provide public involvement opportunities in section 46.305.'' This group maintained that it is essential that the public effectively be involved in the NEPA process, that public participation is a fundamental component of NEPA, and that public involvement extends to all ''environmental documents,'' including EAs. These commenters urged the Department to include positive language in the proposed rule to involve the public in the preparation of an EA, including requiring publishing of draft EAs for public comment, and establishing clear and specific guidelines for public involvement in the EA process.

Response: The Department strongly encourages public involvement and participation in the NEPA process at all stages. However, consistent with CEQ regulations, the Department's final rule distinguishes between ''public involvement'' and ''public comment.'' With respect to EISs, CEQ's regulations specify that the public must have the opportunity to comment on a draft EIS. By contrast, the CEQ regulations do not specify that public involvement should take any particular form for EAs, as recognized by every court that has decided the issue. Therefore, the Department's final rule clarifies that the RO has the discretion to determine how public involvement in the preparation of an EA is to occur, depending on the particular circumstances surrounding the proposed action. Bureaus engage in a wide variety of routine actions, for which EAs are prepared (*e.g.*, approval of replacement of culverts, erection of fences, etc.). Therefore, it is neither necessary nor practical for public comment to be required for each of these EAs. Public involvement can take a variety of forms, ranging from notification on bureau or field office Web sites to the holding of public meetings. Some of the bureaus provide more specific direction on facilitating public involvement (see 516 DM Chapters 8–15 and bureau handbooks).

Comment: Another commenter recommends that the proposed rule should ensure that communities and tribes potentially impacted by the proposed action have adequate opportunities to participate in the development of an EA.

Response: See response above regarding the CEQ requirement respecting public involvement. The circumstances surrounding each proposed action may interest a variety of members of the public, including, but not limited to, communities and tribes potentially impacted by the proposed action. The RO has the discretion to implement public notification and public involvement measures appropriate to the proposed action, and affected communities. In addition, as noted above, and independent of its responsibilities under NEPA, the United States has a government-to-government relationship with federally-recognized tribes. In accordance with this responsibility, the Department specifically provides for consultation, coordination and cooperation within the framework of government-to-government consultation.

Section 46.310 Contents of an EA. This section establishes new language outlining what information must be included in an EA. It describes the requirements for alternatives, if any, and provides for incorporating adaptive management strategies in alternatives. Sections on tiered analysis, from 516 DM Chapter 3, are found in subpart B of this rule, since this information pertains to both EISs and EAs.

Comment: Several commenters supported this section of the proposed rule as it is currently drafted. These commenters maintained that CEQ regulations only require that an EA contain a brief discussion of the environmental impacts of the proposed action and alternatives.

Response: The Department appreciates the comments.

Comment: Other commenters stated that this section of the proposed rule should be removed because it conflicts with NEPA, CEQ regulations, and existing case law.

Response: The Department disagrees. This section fully complies with NEPA and CEQ regulations, as well as CEQ guidance. On September 8, 2005, the CEQ issued EA guidance to Federal agencies entitled ''Emergency Actions and NEPA'' that explained language at section 102(2)(E) of NEPA ''unresolved conflicts concerning alternative uses of available resources'' (42 U.S.C. 4332(2)(E)). The CEQ guidance states: ''When there is consensus about the proposed action based on input from interested parties, you can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, you need to develop reasonable alternatives to meet project needs'' (Attachment 2 ''Preparing Focused, Concise and Timely Environmental Assessments'', *http://ceq.eh.doe.gov/nepa/regs/Preparing_Focused_Concise_and_Timely_EAs.pdf*).

Comment: Several commenters stated that the proposed rule calls for a superficial analysis of impacts, which creates the potential for inadequate research. These commenters were concerned that this superficial analysis will not provide an adequate analysis of impacts, will only serve to exacerbate conflict and will result in poor decision-making and possible litigation.

Response: The Department disagrees. CEQ regulations describe EAs as ''concise'' documents that ''briefly'' provide information sufficient to determine whether preparation of an EIS is required. CEQ has issued guidance consistent with this idea (see September 8, 2005 CEQ guidance referenced above). The Department does not believe that conciseness necessarily leads to a superficial analysis.

Comment: These commenters therefore suggested that ''consensus'' be changed to ''unanimity'' to assure that there is no confusion about the limited circumstances in which paragraph 46.310(b) applies.

Response: ''Unanimity'' is not required; therefore, the Department declines to make the suggested alteration to the final rule.

Comment: One commenter suggested that the cumulative effects of the proposed action and other previous actions should be included in the list of things that must be discussed in an EA.

Response: This rule does not attempt to alter the requirements of the CEQ regulations. Rather, paragraph 46.310(a)(3) of the Department's final rule requires that EAs include brief discussions of the environmental impacts of the proposed action. Environmental impacts include direct, indirect and cumulative impacts (40 CFR 1508.7 and 1508.8). A separate listing of the requirement to include discussion of any cumulative impacts is not necessary.

Section 46.315 How to format an EA. This section provides clarification on the EA format.

No comments were received on this provision.

Section 46.320 Adopting EAs prepared by another agency, entity, or person. In this section, the term ''and other program requirements'' has been added to the compliance stipulations. It also expands the requirements of the RO in adopting another agency's EA.

Comment: One commenter suggested that a new section be added to the proposed rule which includes the requirement that the RO ''consults with other agencies that have regulatory authority over the project'' when adopting an EA prepared by another agency. This commenter maintained this will help ensure that other affected agencies agree with the adoption. Another organization suggested that this section of the proposed rule should state that an Indian tribe may be the applicant.

Response: The determination to adopt another agency's EA is left solely to the discretion of the RO. However, the Department expects that the RO will consult with any other agency that has regulatory authority over the project that is the subject of a bureau's proposed action and environmental analysis. In fact, this final rule provides at section 46.155: ''The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of bureau plans, programs, and activities within the jurisdictions or related to the interests of these agencies.'' This provision applies to proposed actions supported by both EAs and EISs. As such no change has been made to section 46.320.

The Department recognizes generally that an Indian tribe may be an applicant, as well as a State or other unit of government; paragraph 46.300(a) has been modified to read: ''A bureau must ensure that an EA is prepared for all proposed Federal actions'' in order to reflect that it may be the applicant who is preparing the EA, especially when a tribe is the applicant. No other change in this respect has been made to the final rule.

Section 46.325 Conclusion of the EA process. Documentation requirements for decisions made on the basis of EAs and FONSIs are beyond the scope of this rule. After a bureau has completed an EA for a proposed action, the bureau will make a finding of no significant impact, or will determine that it is necessary to prepare an EIS, in which case, the bureau will publish a Notice of Intent in the **Federal Register** or will take no further action on the proposal.

Comment: Several commenters ''suggested that the requirement that a decision be documented also include a requirement that the document be made public.''

Response: Bureau decision documents are public documents. While some bureaus routinely publish these documents (for instance on bureau or field office Web sites), the Department is not including a requirement that all decision documents be published. Decision documents are available from bureaus upon request.

Subpart E: Environmental Impact Statements

This subpart takes the place of 516 DM Chapter 4, with following exceptions.

The language from 516 DM Chapter 4 that simply reiterates the CEQ regulations is not included in subpart E of this rule. Those DM sections are: statutory requirements, cover sheet, summary, purpose and need, appendix, methodology and scientific accuracy, proposals for legislation, and time periods.

Sections on tiering, incorporation of referenced documents into NEPA analysis, incomplete or unavailable information, adaptive management, and contractor prepared environmental documents, from 516 DM Chapter 4 are found in subpart B of this rule since that information pertains to EISs and EAs.

The phrase ''environmentally preferable alternative'' is found in the definitions, subpart A. This phrase expands on the definition that currently exists in 516 DM 4.10(A)(5).

This rule also incorporates procedural changes, clarifies the extent of discretion and responsibility that may be exercised by bureaus and provides clarity in the EIS process.

Section 46.400 Timing of EIS development. This section describes when an EIS must be prepared.

Comment: One commenter recommended revising the definition of ''environment'' within the proposed rule to avoid disputes.

Response: Neither the Department's proposed nor final rule includes a definition of ''environment.'' Neither NEPA nor the CEQ regulations define this term; however, the CEQ regulations do define ''human environment,'' and the definitions in the CEQ regulations apply (see sections 46.20 and 46.30). The Department does not believe that a definition is required.

Comment: One commenter stated that it is important to note that the RO should not have the authority to mandate whether an applicant must pay for environmental analyses. The commenter recommended that the applicant should be given the opportunity to voluntarily fund the NEPA analysis. Others recommended that any reference to who pays for the analysis be deleted from the proposed rule.

Response: The provision in the Department's final rule specifies only that the RO ''must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposal.'' This provision refers specifically to the responsibility of the RO to inform the applicant of any such requirements in each instance. (As noted above in the introduction to section 46.200, this provision has been moved from section 46.400 to section 46.200 because it applies to EAs as well, and the application to EAs was inadvertently left out of the proposed rule.) The question of whether an RO may require an applicant to pay for NEPA analysis is outside the scope of this rule because programs and bureaus have different payment requirements, for example, under their cost recovery authority, if applicable.

Section 46.405 Remaining within page limits. This section encourages bureaus to keep EISs within the page limits described in the CEQ regulations using incorporation of referenced documents into NEPA analysis and tiering.

No comments were received on this provision.

Section 46.415 EIS Content, Alternatives, Circulation and Filing Requirements. This section provides direction for the development of alternatives, establishes language on the documentation of environmental effects with a focus on NEPA statutory requirements, and provides direction for circulating and filing the draft and final EIS or any supplement(s) thereto. The Department changed the title of this section and added a sentence to address

Federal Advisory Committee Act (FACA) implications.

Comment: Some commenters supported this portion of the proposed rule as it is written.

Response: The Department appreciates the comments.

Comment: One group stated that the term ''interested parties'' is too broadly defined, resulting in significant delays in agency decision-making. Consequently, standing would be given to parties that otherwise would lack standing to pursue future legal action.

Response: The Department agrees that the meaning of ''interested parties'' is potentially ambiguous and has revised this term to match the language used in the CEQ regulations. Please see the final rule at section 46.110, as well as the responses to comments on that section.

Comment: Some commenters believed that the cumulative effects of the proposed action and other previous actions must also be disclosed in an EIS. Consequently, these commenters recommended adding cumulative effects to the list of terms that must be disclosed in the contents of an EIS.

Response: Paragraph 46.415(a)(3) of the Department's final rule requires that an EIS disclose ''the environmental impact of the proposed action.'' Environmental impact includes direct, indirect and cumulative impacts (40 CFR 1508.7 and 1508.8). The Department does not believe that a separate listing of the requirement to include discussion of cumulative impacts is necessary.

Comment: Several commenters commented on paragraph (c), which provides ''the RO shall make those preliminary draft and final EISs available to those interested and affected persons and agencies for comment.'' The main concern discussed by commenters is that the word ''shall'' implies that the RO will be required to circulate preliminary drafts of EISs. These commenters recommended that the proposed rule should allow public circulation of preliminary EISs when the RO determines that such circulation would be beneficial, but public disclosure should not be required. Other commenters stated it is inappropriate for agencies to share preliminary EISs that represent preliminary agency thoughts. They were concerned that public release of a preliminary document would hinder internal discussion regarding innovative management options available for consideration and analysis.

Response: The Department has elected not to include a ''preliminary environmental impact statement'' in the final rule. Please see the response above to comments on section 46.30.

Comment: One group recommended clarification of the proposed rule by stating that the human environment changes over time, regardless of the action being assessed under NEPA. They recommended this clarification should ''explicitly exclude the idea that nothing changes over time, so the no action alternative means no change.''

Response: The Department acknowledges that some clarification was needed and added language to the final rule. Natural systems evolve over time. The ''no action'' alternative is not the alternative that results in ''no change'' to the environment; rather it represents the state of the environment without the proposed action or any of the alternatives. When the proposed action involves a proposed change in management then, under the no action alternative, what does not change is management direction or level of intensity.

Comment: Another commenter stated ''it is not clear from the proposed rule how or why ''incremental changes'' will be considered as alternatives'' and asked for additional detail regarding the ''incremental process'' and how it interacts with the alternative discussion.

Response: The Department appreciates this comment. The intent of this provision is that modifications to alternatives developed through a collaborative process, may, themselves, be considered alternatives to a proposed action. To avoid confusion, the final rule no longer uses the term ''incremental'' when dealing with alternatives.

Comment: Many commenters fully supported and encouraged analysis of the no action alternative. Several recommended clarification in the proposed rule on how the tenets of adaptive management will work with the requirements for clearly articulating and pre-specifying the adjustments and the respective environmental effects that might later occur. Another commenter encouraged the Department to specify in the proposed rule that alternatives considered throughout the NEPA process must be capable of achieving the project goals.

Response: The Department believes that no further clarification is necessary. The intent of the provision respecting adaptive management is to clarify that the use of an adaptive management approach does not preclude the necessity of complying with NEPA. Each proposed action, including possible changes in management made as a result of an adaptive management approach may be analyzed at the outset of the process or the changes in management made may be analyzed when implemented.

Comment: Several commenters strongly opposed the idea that the RO, with or without input from any interested parties, would be permitted to make modifications to a proponent's proposed action. These commenters recommend eliminating this language in its entirety from the proposed rule.

Response: Bureaus would analyze reasonable alternatives that would meet the purpose and need for action. In determining the range of reasonable alternatives, the range may in some cases be limited by the proponent's proposed action, but the RO must still evaluate reasonable alternatives within that range. As such the RO may include additional alternatives for analysis, including those which represent different modifications of the proposed action. No change to the provision has been made.

Comment: Some commenters requested clarification on the public comment opportunity that follows the publication of a final EIS. They maintained the rule should explain that the public can submit comments on a final EIS prior to an agency's final decision.

Response: CEQ regulations at 40 CFR 1506.10(b)(2) require a 30-day waiting period between publication of the final EIS and signing of a ROD. CEQ guidance states: ''During that period, in addition to the agency's own internal final review, the public and other agencies can comment on the final EIS prior to the agency's final action on the proposal. CEQ's ''Forty Most Asked Questions.'' Therefore, while this period is not a formal comment period, the public may comment after the publication of the final EIS.

Section 46.420 Terms used in an EIS. This section describes terms that are commonly used to describe concepts or activities in an EIS, including: (a) Statement of purpose and need, (b) Reasonable alternatives, (c) Range of alternatives, (d) Proposed action, (e) Preferred alternative, and (f) No action alternative. Definitions for proposed action and no action alternative have been moved to the definitions in section 46.30 as they may both be applicable to EAs as well as EISs. Comments and responses on these terms, however, are below. In order to clarify that it is the bureau's exercise of discretion that constitutes a proposed action that is subject to NEPA requirements, not just that the bureau might have a statutory role over a non-Federal entity's planned activity, the final rule has been changed to read ''discretion'' rather than

''authority'' in proposed paragraph 46.420(d), which is now in section 46.30. Section 46.30 explains that a ''proposed action'' includes ''the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments.''

Comment: Several commenters stated that the proposed rule should clarify that, in order for an alternative to be reasonable, it must also be technically and economically feasible based upon input from the project proponent. These commenters stated that the term ''range of alternatives'' is defined without regard to the technical and economic feasibility of the alternatives.

Response: The Department's final rule, at paragraph 46.420(b), specifies that the term ''reasonable alternative'' includes alternatives that are technically and economically practical or feasible and that satisfy the purpose and need. The Department agrees that the project proponent, as a member of the public, may provide input to the bureau with respect to the technical and economic feasibility of alternatives. Ultimately, however, the bureau determines whether an alternative is technically and economically practical or feasible and meets the purpose and need of the proposed action. The Department did not include a reference to technical and economic feasibility in the definition of ''range of alternatives.'' Consistent with CEQ's regulations, 40 CFR 1505.1(e), and as explained in CEQ's ''Forty Most Asked Questions'' document, the range of alternatives includes all or a reasonable number of examples covering the full spectrum of reasonable alternatives, each of which must be rigorously explored and objectively evaluated, as well as those other alternatives which are eliminated from detailed study with a brief discussion of the reasons for eliminating them. This includes alternatives that may not be technically and economically feasible. The Department's final rule, at paragraph 46.420(c), maintains this broad meaning of ''range of alternatives.''

Comment: Many commenters recommended that the rule expressly state that the applicant's goals should be the primary consideration in the development of the statement of purpose and need. These commenters stated the Department should remove language in the proposed rule that requires agencies to consider the public interest in approving an application.

Response: The Department agrees that the bureau should consider the needs and goals of the parties involved, including the applicant. However, the public interest is also a key consideration under NEPA. As such the Department has not changed the language of this provision in the final rule.

Comment: One group recommended using the definition in paragraph 46.420(b) for the feasibility requirement throughout the proposed rule because it is the most complete definition.

Response: The Department concurs with the intent of this recommendation and has implemented this recommendation by changing 46.415(b) to read ''range of alternatives'' rather than ''reasonable alternatives,'' as ''range of alternatives'' as defined at paragraph 46.420(c) incorporates the definition of ''reasonable alternatives'' at paragraph 46.420(b).

Comment: One commenter stated that the definition of ''range of alternatives'' is circular and should be revised.

Response: The Department agrees and has clarified that the phrase ''rigorously explored and objectively evaluated'' in the CEQ regulations applies only to reasonable alternatives.

Comment: One commenter recommended that the Department distinguish the proposed federal action from the proposed project or activity for which the federal action is necessary.

Response: The Department agrees and has clarified the language of section 46.30 (formerly proposed as paragraph 46.420(d)). Paragraph 46.420(d) explains that a ''proposed action'' includes ''the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments.''

Comment: A commenter agreed with the statement that no action can mean either no action or no change and that the proposed rule should acknowledge that the effect of the no action alternative is not always maintenance of the status quo.

Response: As specified in proposed paragraph 46.420(f) and now at section 46.30, the Department agrees that the no action alternative has two interpretations—''no change from a current management direction or level of management intensity'' or ''no project.'' Natural systems evolve over time. The ''no action'' alternative is not the alternative that results in ''no change'' to the environment; rather it represents the state of the environment without the proposed action or any of the alternatives. The Department has made minor edits to this section to clarify this point.

Comment: One individual recommended inserting ''national policies'' after ''giving consideration to'' in paragraph (e).

Response: The Department does not believe it is necessary to specifically include ''national policies'' as one of the factors that the bureau considers in identifying the preferred alternative. Proposed paragraph (e), now (d), refers to ''other factors,'' which is broad enough to include a variety of considerations, including, if appropriate, national policies.

Comment: One commenter stated that it is unclear whether the terms ''practical'' and ''feasible'' are intended to be synonymous within the proposed rule.

Response: These terms are not intended to be synonymous. CEQ's ''Forty Most Asked Questions'' explains ''reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense.'' Any given reasonable alternative could be practical, feasible, or both.

Comment: One commenter encouraged the Department to revise the proposed rule to clarify and reflect established NEPA precedent that agencies need not conduct a separate analysis of alternatives that have substantially similar consequences.

Response: The Department agrees that bureaus need not separately analyze alternatives that have been shown to have substantially similar environmental consequences. This is a well-established principle; no change to the final rule is necessary.

Section 46.425 Identification of the preferred alternative in an EIS. This section clarifies when the preferred alternative must be identified.

Comment: Several groups questioned why more than one preferred alternative would be necessary and recommend that only one preferred alternative be allowed to avoid confusion.

Response: The Department's final rule is consistent with CEQ regulations, which expressly contemplate situations in which more than one preferred alternative may exist. 40 CFR 1502.14(e). Rather than confusing the public, the Department believes that in certain circumstances presentation of more than one preferred alternatives may encourage public involvement in the process.

Section 46.430 Environmental review and consultation requirements. This section establishes procedures for an EIS that also addresses other

environmental review requirements and approvals. It should be noted that this section allows for the completion of the NEPA analysis prior to obtaining all permits. However, if the terms of the permit are outside of the scope of analysis, additional NEPA analysis may be required.

Comment: One commenter commented that CEQ is currently undertaking a project to integrate review under NEPA and the National Historic Preservation Act (NHPA). This commenter recommended that the Department assure effective integration of that project's results with the proposed rule. In order to protect statutory rights of Indian tribes, another group recommended integration of regulations from the Advisory Council on Historic Preservation in this section of the proposed rule.

Response: Regulations implementing the National Historic Preservation Act (NHPA) at 36 CFR Part 800 encourage Federal agencies to coordinate compliance with section 106 of the NHPA with steps taken to meet the requirements of NEPA (36 CFR 800.8(a)). The Department is aware of the CEQ initiative to develop guidance to integrate review under NEPA and the NHPA, as called for in both the NHPA and the CEQ regulations (40 CFR 1502.25(a)) and will work with CEQ to integrate any such guidance in the Department's directives as appropriate. Please see response to comments addressing section 46.110 above regarding the Department's fulfillment of its responsibilities toward Indian tribes.

Comment: One group strongly supported consolidation of processes whenever possible to reduce delays and eliminate duplication of effort. This group proposed revision of the proposed rule to promote the consolidation of processes ''to the extent possible and otherwise not prohibited by law.'' This group also recommended the establishment of an exemption for mining operations based on the ''functional equivalence doctrine.'' They maintained that other laws and regulations applicable to the mining operations provide a rigorous framework for providing a ''harder look'' at environmental consequences than NEPA.

Response: The Department appreciates the support for its efforts to encourage consolidation of processes whenever possible. However, the Department does not believe the revision proposed by the commenter to paragraph 46.430(b) is necessary. The Department does not believe such an exemption for mining operations as advocated by the commenter is warranted, as it addresses matters beyond the scope of this rulemaking.

Comment: One commenter recommended revision of ''Paragraph (a) to clarify that an EIS need only identify and discuss studies relied upon for other consultation and review processes if the EIS is intended to serve as the NEPA compliance for those review processes.''

Response: The Department believes no revision to the final rule is necessary. When paragraph 46.430(a) states ''An EIS that also addresses other environmental review and consultation requirements. * * *'' this means that it is precisely when the EIS in question is to serve as the NEPA compliance (in whole or in part) for the other environmental review and consultation requirements that the EIS needs to identify and discuss studies relied upon for these other review and consultation processes.

Section 46.435 Inviting comments. This section requires bureaus to request comments from Federal, State, and local agencies, or tribal governments, and the public at large. This section also clarifies that bureaus do not have to delay a final EIS because they have not received comments.

Comment: One group proposed revisions to the proposed rule, which include: (1) Requesting comments from any potentially affected tribal government, (2) recognizing the federal government's continuing obligation to consult with tribal governments prior to making decisions which may impact tribal rights, (3) revising paragraph (c) to include all lands and waters within the boundaries of tribal lands, (4) inserting language to explicitly include Alaska Native tribes, and (5) including additional clauses covering various situations in which the Department must invite comments from a tribe. This group proposed these revisions because it believes the current language could be interpreted too narrowly by the Department bureaus, resulting in bureaus deciding not to request comments from tribal governments, even though a proposed action may affect tribal rights or interests.

Response: CEQ regulations at 40 CFR 1503.1(a)(4) require that agencies shall request the comments on a draft EIS from ''the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.'' This would necessarily include ''any potentially affected tribal government'' regardless of whether the proposed action may affect the environment of Indian trust or restricted land or other Indian trust resources, trust assets, or tribal health and safety, as specified in 46.435(c). In view of the CEQ regulations, the Department does not believe it is necessary to include the commenter's proposed language in this final rule. For instance, under 40 CFR 1503.1(a)(4), the bureaus would need to request comments from those persons or organizations affected by impacts to the resources noted by the commenters, including ''one or more historic properties to which the tribe attaches religious and cultural significance'' or ''wildlife or plant species that are important to the tribe for cultural purposes.'' Likewise, if any member of the public specifically requests information regarding the analysis of effects of a proposed action on a specific identified area, the bureau would provide that information.

This being said, the requirement to engage in government-to-government consultation with Indian tribes is a requirement apart from NEPA, and, in effect, broadens any consultation that needs to take place as a function of compliance with NEPA. The Department has other, more specific directives addressing government-to-government consultation, as well as how the Department is to fulfill its trust responsibilities. See, *e.g.*, 512 DM 2: ''Departmental Responsibilities for Indian Trust Resources''; ECM97–2 ''Departmental Responsibilities for Indian Trust Resources and Indian Sacred Sites on Federal Lands''.

Comment: One commenter encouraged the Department to provide for better coordination with permit applicants when the federal action being examined involves the issuance of a federal permit or authorization.

Response: Please see discussion, above, regarding paragraph 46.430(a).

Section 46.440 Eliminating duplication with State and local procedures. This section allows a State agency to jointly prepare an EIS, if applicable.

No comments were received addressing this provision.

Section 46.445 Preparing a legislative EIS. This section ensures that, when appropriate, a legislative EIS will be included as a part of the formal transmittal of a legislative proposal to the Congress.

No comments were received addressing this provision.

Section 46.450 Identifying the environmentally preferable alternative. This section provides for identifying the environmentally preferable alternative in the ROD.

Comment: One commenter supported this part of the proposed rule as it is written. Multiple commenters oppose

this section of the proposed rule and urge the Department to delete this section from the proposed rule. They believed ''that this provision is not necessary in light of the existing CEQ regulation found at 40 CFR 1505.2.'' In the event that Department does not remove this section from the proposed rule, these commenters recommended that the Department revise this section to include clarification that this rule in no way obligates agencies to identify and select an ''environmentally preferable alternative'' during its NEPA analysis.

Response: The Department appreciates these comments, but believes this provision is necessary to distinguish between ''identifying'' and ''selecting'' an environmentally preferable alternative, both for Departmental personnel and members of the public. Although the environmentally preferable alternative must be identified in the ROD, the RO is not required to select the environmentally preferable alternative as the alternative that will be implemented. No change is made in the final rule.

Procedural Requirements

Regulatory Planning and Review (E.O. 12866)

This is a significant rule and has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule:

(1) Is not an economically significant action because it will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments.

(2) Will not interfere with an action taken or planned by another agency.

(3) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

(4) Raises novel policy and legal issues. It is a significant rulemaking action subject to OMB review because of the extensive interest in Department planning and decision making relating to NEPA.

In accordance with the Office of Management and Budget (OMB) Circular A–4, ''Regulatory Analysis,'' the Department has conducted a cost/benefit analysis. The analysis compared the costs and benefits associated with the current condition of having Departmental implementing procedures combined with Departmental explanatory guidance in the DM and the condition of having implementing direction in regulations and explanatory guidance in the DM.

Many benefits and costs associated with the rule are not quantifiable. Some of the benefits of this rule include collaborative and participatory public involvement to more fully address public concerns, timely and focused environmental analysis, and flexibility in preparation of environmental documents. These will be positive effects of the new rule.

Moving NEPA procedures from the DM to regulations is expected to provide a variety of potential beneficial effects. This rule would meet the requirements of 40 CFR 1507.3 by placing the Department's implementing procedures in their proper regulatory position. The Department will maintain Department- and bureau-specific directives in the DM and bureau handbooks to assist field offices. This will facilitate timely bureau responses to procedural interpretations, training needs, and editorial changes to addresses and Internet links to assist bureaus when implementing the NEPA process. Finally, the changes to the Department NEPA procedures are intended to provide the Department specific options to meet the intent of NEPA through increased emphasis on collaboration and the use of a consensus-based approach when practicable.

Thus, while no single effect of this rule creates a significant quantifiable improvement, the benefits outlined above taken together create the potential for visible improvements in the Department's NEPA program. Further discussion of the costs and benefits associated with the rule is contained in the economic analysis which is incorporated in the administrative record for this rulemaking and may be accessed on the Department's Office of Environmental Policy and Compliance Web site located at: *http://www.doi.gov/oepc*.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804(2).

Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Takings (E.O. 12630)

This rule has been analyzed in accordance with the principles and criteria contained in E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the rule does not pose the risk of a taking of Constitutionally protected private property.

Federalism (E.O. 13132)

The Department has considered this rule under the requirements of E.O. 13132, Federalism. The Department has concluded that the rule conforms to the federalism principles set out in this E.O.; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system;

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity, and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

In accordance with E.O. 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on tribal trust resources and have determined that it does not directly affect tribal resources since it describes the Department's procedures for its compliance with NEPA.

Paperwork Reduction Act

This rule does not contain information collections subject to OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

National Environmental Policy Act

The CEQ does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing agency NEPA procedures does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service,* 73 F. Supp. 2d 962, 972–73 (S.D. III. 1999), aff'd 230 F.3d 947. 954–55 (7th Cir. 2000).

Data Quality Act

In developing this rule we did not conduct or use a study requiring peer review under the Data Quality Act (Pub. L. 106–554).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments as instructed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

List of Subjects in 43 CFR part 46

Environmental protection, EISs.

Dated: September 30, 2008.

James E. Cason,

Associate Deputy Secretary.

■ For the reasons given in the preamble, the Office of the Secretary is adding a new part 46 to Subtitle A of title 43 of the Code of Federal Regulations to read as follows:

PART 46—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

Sec.

Subpart A—General Information

46.10 Purpose of this part.
46.20 How to use this part.
46.30 Definitions.

Subpart B—Protection and Enhancement of Environmental Quality

46.100 Federal action subject to the procedural requirements of NEPA.
46.105 Using a contractor to prepare environmental documents.
46.110 Incorporating consensus-based management.
46.115 Consideration of past actions in analysis of cumulative effects.
46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations.
46.125 Incomplete or unavailable information.
46.130 Mitigation measures in analyses.
46.135 Incorporation of referenced documents into NEPA analysis.
46.140 Using tiered documents.
46.145 Using adaptive management.
46.150 Emergency responses.
46.155 Consultation, coordination, and cooperation with other agencies.
46.160 Limitations on actions during the NEPA analysis process.
46.170 Environmental effects abroad of major Federal actions.

Subpart C—Initiating the NEPA Process

46.200 Applying NEPA early.
46.205 Actions categorically excluded from further NEPA review.
46.210 Listing of Departmental Categorical Exclusions.
46.215 Categorical Exclusions: Extraordinary circumstances.
46.220 How to designate lead agencies.
46.225 How to select cooperating agencies.
46.230 Role of cooperating agencies in the NEPA process.
46.235 NEPA scoping process.
46.240 Establishing time limits for the NEPA process.

Subpart D—Environmental Assessments

46.300 Purpose of an environmental assessment and when it must be prepared.
46.305 Public involvement in the environmental assessment process.
46.310 Contents of an environmental assessment.
46.315 How to format an environmental assessment.
46.320 Adopting environmental assessments prepared by another agency, entity, or person.
46.325 Conclusion of the environmental assessment process.

Subpart E—Environmental Impact Statements

46.400 Timing of environmental impact statement development.
46.405 Remaining within page limits.
46.415 Environmental impact statement content, alternatives, circulation and filing requirements.
46.420 Terms used in an environmental impact statement.
46.425 Identification of the preferred alternative in an environmental impact statement.
46.430 Environmental review and consultation requirements.
46.435 Inviting comments.
46.440 Eliminating duplication with State and local procedures.
46.445 Preparing a legislative environmental impact statement.
46.450 Identifying the environmentally preferable alternative.

Authority: 42 U.S.C. 4321 *et seq.* (The National Environmental Policy Act of 1969, as amended); Executive Order 11514, (Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977)); 40 CFR parts 1500–1508 (43 FR 55978) (National Environmental Policy Act, Implementation of Procedural Provisions).

Subpart A—General Information

§ 46.10 Purpose of this part.

(a) This part establishes procedures for the Department, and its constituent bureaus, to use for compliance with:

(1) The National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*); and

(2) The Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508).

(b) Consistent with 40 CFR 1500.3, it is the Department's intention that any trivial violation of these regulations will not give rise to any independent cause of action.

§ 46.20 How to use this part.

(a) This part supplements, and is to be used in conjunction with, the CEQ regulations except where it is inconsistent with other statutory requirements. The following table shows the corresponding CEQ regulations for the sections in subparts A—E of this part. Some sections in those subparts do not have a corresponding CEQ regulation.

Subpart A 40 CFR

46.10 Parts 1500–1508

46.20 No corresponding CEQ regulation
46.30 No corresponding CEQ regulation

Subpart B

46.100 1508.14, 1508.18, 1508.23
46.105 1506.5
46.110 No corresponding CEQ regulation
46.115 1508.7
46.120 1502.9, 1502.20, 1502.21, 1506.3
46.125 1502.22
46.130 1502.14
46.135 1502.21
46.140 1502.20
46.145 No corresponding CEQ regulation
46.150 1506.11
46.155 1502.25, 1506.2
46.160 1506.1
46.170 No corresponding CEQ regulation

Subpart C

46.200 1501.2
46.205 1508.4
46.210 1508.4
46.215 1508.4
46.220 1501.5
46.225 1501.6
46.230 1501.6
46.235 1501.7
46.240 1501.8

Subpart D

46.300 1501.3
46.305 1501.7, 1506.6
46.310 1508.9
46.315 No corresponding CEQ regulation
46.320 1506.3
46.325 1501.4

Subpart E

46.400 1502.5
46.405 1502.7
46.415 1502.10
46.420 1502.14
46.425 1502.14
46.430 1502.25
46.435 1503
46.440 1506.2
46.445 1506.8
46.450 1505.2

(b) The Responsible Official will ensure that the decision making process for proposals subject to this part includes appropriate NEPA review.

(c) During the decision making process for each proposal subject to this part, the Responsible Official shall consider the relevant NEPA documents, public and agency comments (if any) on those documents, and responses to those comments, as part of consideration of the proposal and, except as specified in paragraphs 46.210(a) through (j), shall include such documents, including supplements, comments, and responses as part of the administrative file.

(d) The Responsible Official's decision on a proposed action shall be within the range of alternatives discussed in the relevant environmental document. The Responsible Official's decision may combine elements of alternatives discussed in the relevant environmental document if the effects of such combined elements of alternatives are reasonably apparent from the analysis in the relevant environmental document.

(e) For situations involving an applicant, the Responsible Official should initiate the NEPA process upon acceptance of an application for a proposed Federal action. The Responsible Official must publish or otherwise provide policy information and make staff available to advise potential applicants of studies or other information, such as costs, foreseeably required for later Federal action.

§ 46.30 Definitions.

For purposes of this part, the following definitions supplement terms defined at 40 CFR parts 1500–1508.

Adaptive management is a system of management practices based on clearly identified outcomes and monitoring to determine whether management actions are meeting desired outcomes; and, if not, facilitating management changes that will best ensure that outcomes are met or re-evaluated. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain.

Bureau means bureau, office, service, or survey within the Department of the Interior.

Community-based training in the NEPA context is the training of local participants together with Federal participants in the workings of the environmental planning effort as it relates to the local community(ies).

Controversial refers to circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.

Environmental Statement Memoranda (ESM) are a series of instructions issued by the Department's Office of Environmental Policy and Compliance to provide information and explanatory guidance in the preparation, completion, and circulation of NEPA documents.

Environmentally preferable alternative is the alternative required by 40 CFR 1505.2(b) to be identified in a record of decision (ROD), that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historical, cultural, and natural resources. The environmentally preferable alternative is identified upon consideration and weighing by the Responsible Official of long-term environmental impacts against short-term impacts in evaluating what is the best protection of these resources. In some situations, such as when different alternatives impact different resources to different degrees, there may be more than one environmentally preferable alternative.

No action alternative.

(1) This term has two interpretations. First ''no action'' may mean ''no change'' from a current management direction or level of management intensity (*e.g.*, if no ground-disturbance is currently underway, no action means no ground-disturbance). Second ''no action'' may mean ''no project'' in cases where a new project is proposed for implementation.

(2) The Responsible Official must determine the ''no action'' alternative consistent with one of the definitions in paragraph (1) of this definition and appropriate to the proposed action to be analyzed in an environmental impact statement. The no action alternative looks at effects of not approving the action under consideration.

Proposed action. This term refers to the bureau activity under consideration. It includes the bureau's exercise of discretion over a non-Federal entity's planned activity that falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal approvals, funding, or regulatory instruments. The proposed action:

(1) Is not necessarily, but may become, during the NEPA process, the bureau preferred alternative or (in a record of decision for an environmental impact statement, in accordance with 40 CFR 1505.2) an environmentally preferable alternative; and

(2) Must be clearly described in order to proceed with NEPA analysis.

Reasonably foreseeable future actions include those federal and non-federal activities not yet undertaken, but sufficiently likely to occur, that a Responsible Official of ordinary prudence would take such activities into account in reaching a decision. These federal and non-federal activities that must be taken into account in the analysis of cumulative impact include, but are not limited to, activities for which there are existing decisions, funding, or proposals identified by the

bureau. Reasonably foreseeable future actions do not include those actions that are highly speculative or indefinite.

Responsible Official is the bureau employee who is delegated the authority to make and implement a decision on a proposed action and is responsible for ensuring compliance with NEPA.

Subpart B—Protection and Enhancement of Environmental Quality

§ 46.100 Federal action subject to the procedural requirements of NEPA.

(a) A bureau proposed action is subject to the procedural requirements of NEPA if it would cause effects on the human environment (40 CFR 1508.14), and is subject to bureau control and responsibility (40 CFR 1508.18). The determination of whether a proposed action is subject to the procedural requirements of NEPA depends on the extent to which bureaus exercise control and responsibility over the proposed action and whether Federal funding or approval are necessary to implement it. If Federal funding is provided with no Federal agency control as to the expenditure of such funds by the recipient, NEPA compliance is not necessary. The proposed action is not subject to the procedural requirements of NEPA if it is exempt from the requirements of section 102(2) of NEPA.

(b) A bureau shall apply the procedural requirements of NEPA when the proposal is developed to the point that:

(1) The bureau has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal; and

(2) The effects of the proposed action can be meaningfully evaluated (40 CFR 1508.23).

§ 46.105 Using a contractor to prepare environmental documents.

A Responsible Official may use a contractor to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(b) and (c). If a Responsible Official uses a contractor, the Responsible Official remains responsible for:

(a) Preparation and adequacy of the environmental documents; and

(b) Independent evaluation of the environmental documents after their completion.

§ 46.110 Incorporating consensus-based management.

(a) Consensus-based management incorporates direct community involvement in consideration of bureau activities subject to NEPA analyses, from initial scoping to implementation of the bureau decision. It seeks to achieve agreement from diverse interests on the goals of, purposes of, and needs for bureau plans and activities, as well as the methods anticipated to carry out those plans and activities. For the purposes of this Part, consensus-based management involves outreach to persons, organizations or communities who may be interested in or affected by a proposed action with an assurance that their input will be given consideration by the Responsible Official in selecting a course of action.

(b) In incorporating consensus-based management in the NEPA process, bureaus should consider any consensus-based alternative(s) put forth by those participating persons, organizations or communities who may be interested in or affected by the proposed action. While there is no guarantee that any particular consensus-based alternative will be considered to be a reasonable alternative or be identified as the bureau's preferred alternative, bureaus must be able to show that the reasonable consensus-based alternative, if any, is reflected in the evaluation of the proposed action and discussed in the final decision. To be selected for implementation, a consensus-based alternative must be fully consistent with NEPA, the CEQ regulations, and all applicable statutory and regulatory provisions, as well as Departmental and bureau written policies and guidance.

(c) The Responsible Official must, whenever practicable, use a consensus-based management approach to the NEPA process.

(d) If the Responsible Official determines that the consensus-based alternative, if any, is not the preferred alternative, he or she must state the reasons for this determination in the environmental document.

(e) When practicing consensus-based management in the NEPA process, bureaus must comply with all applicable laws, including any applicable provisions of the Federal Advisory Committee Act (FACA).

§ 46.115 Consideration of past actions in the analysis of cumulative effects.

When considering the effects of past actions as part of a cumulative effects analysis, the Responsible Official must analyze the effects in accordance with 40 CFR 1508.7 and in accordance with relevant guidance issued by the Council on Environmental Quality, such as ''The Council on Environmental Quality Guidance Memorandum on Consideration of Past Actions in Cumulative Effects Analysis'' dated June 24, 2005, or any superseding Council on Environmental Quality guidance.

§ 46.120 Using existing environmental analyses prepared pursuant to NEPA and the Council on Environmental Quality regulations.

(a) When available, the Responsible Official should use existing NEPA analyses for assessing the impacts of a proposed action and any alternatives. Procedures for adoption or incorporation by reference of such analyses must be followed where applicable.

(b) If existing NEPA analyses include data and assumptions appropriate for the analysis at hand, the Responsible Official should use these existing NEPA analyses and/or their underlying data and assumptions where feasible.

(c) An existing environmental analysis prepared pursuant to NEPA and the Council on Environmental Quality regulations may be used in its entirety if the Responsible Official determines, with appropriate supporting documentation, that it adequately assesses the environmental effects of the proposed action and reasonable alternatives. The supporting record must include an evaluation of whether new circumstances, new information or changes in the action or its impacts not previously analyzed may result in significantly different environmental effects.

(d) Responsible Officials should make the best use of existing NEPA documents by supplementing, tiering to, incorporating by reference, or adopting previous NEPA environmental analyses to avoid redundancy and unnecessary paperwork.

§ 46.125 Incomplete or unavailable information.

In circumstances where the provisions of 40 CFR 1502.22 apply, bureaus must consider all costs to obtain information. These costs include monetary costs as well as other non-monetized costs when appropriate, such as social costs, delays, opportunity costs, and non-fulfillment or non-timely fulfillment of statutory mandates.

§ 46.130 Mitigation measures in analyses.

(a) Bureau proposed action. The analysis of the proposed action and any alternatives must include an analysis of the effects of the proposed action or alternative as well as analysis of the effects of any appropriate mitigation measures or best management practices that are considered. The mitigation measures can be analyzed either as elements of alternatives or in a separate discussion of mitigation.

(b) Applicant proposals (*i.e.*, bureau decision-making on such proposals is the proposed action). An applicant's

proposal presented to the bureau for analysis must include any ameliorative design elements (including stipulations, conditions, or best management practices), required to make the proposal conform to applicable legal requirements, as well as any voluntary ameliorative design element(s). The effects of any mitigation measures other than the ameliorative design elements included in the applicant's proposal must also be analyzed. The analysis of these mitigation measures can be structured as a matter of consideration of alternatives to approving the applicant's proposal or as separate mitigation measures to be imposed on any alternative selected for implementation.

§ 46.135 Incorporation of referenced documents into NEPA analysis.

(a) The Responsible Official must determine that the analysis and assumptions used in the referenced document are appropriate for the analysis at hand.

(b) Citations of specific information or analysis from other source documents should include the pertinent page numbers or other relevant identifying information.

(c) Publications incorporated into NEPA analysis by reference must be listed in the bibliography. Such publications must be readily available for review and, when not readily available, they must be made available for review as part of the record supporting the proposed action.

§ 46.140 Using tiered documents.

A NEPA document that tiers to another broader NEPA document in accordance with 40 CFR 1508.28 must include a finding that the conditions and environmental effects described in the broader NEPA document are still valid or address any exceptions.

(a) Where the impacts of the narrower action are identified and analyzed in the broader NEPA document, no further analysis is necessary, and the previously prepared document can be used for purposes of the pending action.

(b) To the extent that any relevant analysis in the broader NEPA document is not sufficiently comprehensive or adequate to support further decisions, the tiered NEPA document must explain this and provide any necessary analysis.

(c) An environmental assessment prepared in support of an individual proposed action can be tiered to a programmatic or other broader-scope environmental impact statement. An environmental assessment may be prepared, and a finding of no significant impact reached, for a proposed action with significant effects, whether direct, indirect, or cumulative, if the environmental assessment is tiered to a broader environmental impact statement which fully analyzed those significant effects. Tiering to the programmatic or broader-scope environmental impact statement would allow the preparation of an environmental assessment and a finding of no significant impact for the individual proposed action, so long as any previously unanalyzed effects are not significant. A finding of no significant impact other than those already disclosed and analyzed in the environmental impact statement to which the environmental assessment is tiered may also be called a ''finding of no *new* significant impact.''

§ 46.145 Using adaptive management.

Bureaus should use adaptive management, as appropriate, particularly in circumstances where long-term impacts may be uncertain and future monitoring will be needed to make adjustments in subsequent implementation decisions. The NEPA analysis conducted in the context of an adaptive management approach should identify the range of management options that may be taken in response to the results of monitoring and should analyze the effects of such options. The environmental effects of any adaptive management strategy must be evaluated in this or subsequent NEPA analysis.

§ 46.150 Emergency responses.

This section applies only if the Responsible Official determines that an emergency exists that makes it necessary to take urgently needed actions before preparing a NEPA analysis and documentation in accordance with the provisions in subparts D and E of this part.

(a) The Responsible Official may take those actions necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources. When taking such actions, the Responsible Official shall take into account the probable environmental consequences of these actions and mitigate foreseeable adverse environmental effects to the extent practical.

(b) The Responsible Official shall document in writing the determination that an emergency exists and describe the responsive action(s) taken at the time the emergency exists. The form of that documentation is within the discretion of the Responsible Official.

(c) If the Responsible Official determines that proposed actions taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are not likely to have significant environmental impacts, the Responsible Official shall document that determination in an environmental assessment and a finding of no significant impact prepared in accordance with this part, unless categorically excluded (see subpart C of this part). If the Responsible Official finds that the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an environmental assessment and a finding of no significant impact, the Responsible Official shall consult with the Office of Environmental Policy and Compliance about alternative arrangements for NEPA compliance. The Assistant Secretary, Policy Management and Budget or his/her designee may grant an alternative arrangement. Any alternative arrangement must be documented. Consultation with the Department must be coordinated through the appropriate bureau headquarters.

(d) The Department shall consult with CEQ about alternative arrangements as soon as possible if the Responsible Official determines that proposed actions, taken in response to an emergency, beyond actions noted in paragraph (a) of this section, are likely to have significant environmental impacts. The Responsible Official shall consult with appropriate bureau headquarters and the Department, about alternative arrangements as soon as the Responsible Official determines that the proposed action is likely to have a significant environmental effect. Such alternative arrangements will apply only to the proposed actions necessary to control the immediate impacts of the emergency. Other proposed actions remain subject to NEPA analysis and documentation in accordance with this part.

§ 46.155 Consultation, coordination, and cooperation with other agencies.

The Responsible Official must whenever possible consult, coordinate, and cooperate with relevant State, local, and tribal governments and other bureaus and Federal agencies concerning the environmental effects of any Federal action within the jurisdictions or related to the interests of these entities.

§ 46.160 Limitations on actions during the NEPA analysis process.

During the preparation of a program or plan NEPA document, the Responsible Official may undertake any

major Federal action in accordance with 40 CFR 1506.1 when that action is within the scope of, and analyzed in, an existing NEPA document supporting the current plan or program, so long as there is adequate NEPA documentation to support the individual action.

§ 46.170 Environmental effects abroad of major Federal actions.

(a) In order to facilitate informed decision-making, the Responsible Official having ultimate responsibility for authorizing and approving proposed actions encompassed by the provisions of Executive Order (EO) 12114 shall follow the provisions and procedures of that EO. EO 12114 ''represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act, with respect to the environment outside the United States, its territories and possessions.''

(b) When implementing EO 12114, bureaus shall coordinate with the Department. The Department shall then consult with the Department of State, which shall coordinate all communications by the Department with foreign governments concerning environmental agreements and other arrangements in implementing EO 12114.

Subpart C—Initiating the NEPA Process

§ 46.200 Applying NEPA early.

(a) For any potentially major proposed Federal action (40 CFR 1508.23 and 1508.18) that may have potentially significant environmental impacts, bureaus must coordinate, as early as feasible, with:

(1) Any other bureaus or Federal agencies, State, local, and tribal governments having jurisdiction by law or special expertise; and

(2) Appropriate Federal, State, local, and tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources or other aspects of the human environment.

(b) Bureaus must solicit the participation of all those persons or organizations that may be interested or affected as early as possible, such as at the time an application is received or when the bureau initiates the NEPA process for a proposed action.

(c) Bureaus should provide, where practicable, any appropriate community-based training to reduce costs, prevent delays, and facilitate and promote efficiency in the NEPA process.

(d) Bureaus should inform private or non-Federal applicants, to the extent feasible, of:

(1) Any appropriate environmental information that the applicants must include in their applications; and

(2) Any consultation with other Federal agencies, or State, local, or tribal governments that the applicant must accomplish before or during the application process.

(e) Bureaus must inform applicants as soon as practicable of any responsibility they will bear for funding environmental analyses associated with their proposals.

§ 46.205 Actions categorically excluded from further NEPA review.

Categorical Exclusion means a category or kind of action that has no significant individual or cumulative effect on the quality of the human environment. See 40 CFR 1508.4.

(a) Except as provided in paragraph (c) of this section, if an action is covered by a Departmental categorical exclusion, the bureau is not required to prepare an environmental assessment (see subpart D of this part) or an environmental impact statement (see subpart E of this part). If a proposed action does not meet the criteria for any of the listed Departmental categorical exclusions or any of the individual bureau categorical exclusions, then the proposed action must be analyzed in an environmental assessment or environmental impact statement.

(b) The actions listed in section 46.210 are categorically excluded, Department-wide, from preparation of environmental assessments or environmental impact statements.

(c) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect and require additional analysis and action. Section 46.215 lists the extraordinary circumstances under which actions otherwise covered by a categorical exclusion require analyses under NEPA.

(1) Any action that is normally categorically excluded must be evaluated to determine whether it meets any of the extraordinary circumstances in section 46.215; if it does, further analysis and environmental documents must be prepared for the action.

(2) Bureaus must work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the section 46.215 extraordinary circumstances.

(d) Congress may establish categorical exclusions by legislation, in which case the terms of the legislation determine how to apply those categorical exclusions.

§ 46.210 Listing of Departmental categorical exclusions.

The following actions are categorically excluded under paragraph 46.205(b), unless any of the extraordinary circumstances in section 46.215 apply:

(a) Personnel actions and investigations and personnel services contracts.

(b) Internal organizational changes and facility and bureau reductions and closings.

(c) Routine financial transactions including such things as salaries and expenses, procurement contracts (*e.g.*, in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

(d) Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are outside the scope of NEPA in accordance with 40 CFR 1508.18(a).

(e) Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

(f) Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (*e.g.*, limited size and magnitude or short-term effects).

(g) Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

(h) Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations and minor boundary changes and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal,

technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

(j) Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

(k) Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities:

(1) Shall be limited to areas—

(i) In wildland-urban interface; and

(ii) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface;

(2) Shall be identified through a collaborative framework as described in ''A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;''

(3) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(4) Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; and

(5) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction. (Refer to the ESM Series for additional, required guidance.)

(l) Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities must comply with the following (Refer to the ESM Series for additional, required guidance.):

(1) Shall be conducted consistent with bureau and Departmental procedures and applicable land and resource management plans;

(2) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(3) Shall be completed within three years following a wildland fire.

§ 46.215 Categorical Exclusions: Extraordinary circumstances.

Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section. Applicability of extraordinary circumstances to categorical exclusions is determined by the Responsible Official.

(a) Have significant impacts on public health or safety.

(b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.

(c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].

(d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

(e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

(f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.

(g) Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by the bureau.

(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat for these species.

(i) Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

(j) Have a disproportionately high and adverse effect on low income or minority populations (EO 12898).

(k) Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (EO 13007).

(l) Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).

§ 46.220 How to designate lead agencies.

(a) In most cases, the Responsible Official should designate one Federal agency as the lead with the remaining Federal, State, tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can work to ensure that the NEPA document will meet their needs for adoption and application to their related decision(s).

(b) In some cases, a non-Federal agency (including a tribal government) must comply with State or local requirements that are comparable to the NEPA requirements. In these cases, the Responsible Official may designate the non-Federal agency as a joint lead agency. (See 40 CFR 1501.5 and 1506.2 for a description of the selection of lead agencies, the settlement of lead agency disputes, and the use of joint lead agencies.)

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there is a joint lead, then one Federal agency must be identified as the agency responsible for filing the environmental impact statement with EPA.

§ 46.225 How to select cooperating agencies.

(a) An ''eligible governmental entity'' is:

(1) Any Federal agency that is qualified to participate in the development of an environmental impact statement as provided for in 40 CFR 1501.6 and 1508.5 by virtue of its jurisdiction by law, as defined in 40 CFR 1508.15;

(2) Any Federal agency that is qualified to participate in the development of an environmental impact statement by virtue of its special expertise, as defined in 40 CFR 1508.26; or

(3) Any non-Federal agency (State, tribal, or local) with qualifications similar to those in paragraphs (a)(1) and (a)(2) of this section.

(b) Except as described in paragraph (c) of this section, the Responsible Official for the lead bureau must invite eligible governmental entities to participate as cooperating agencies

when the bureau is developing an environmental impact statement.

(c) The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(d) Bureaus should work with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assignment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Memoranda of understanding must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of any NEPA document, including drafts.

(e) The procedures of this section may be used for an environmental assessment.

§ 46.230 Role of cooperating agencies in the NEPA process.

In accordance with 40 CFR 1501.6, throughout the development of an environmental document, the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:

(a) Identify issues to be addressed;

(b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;

(c) Analyze data;

(d) Develop alternatives;

(e) Evaluate alternatives and estimate the effects of implementing each alternative; and

(f) Carry out any other task necessary for the development of the environmental analysis and documentation.

§ 46.235 NEPA scoping process.

(a) Scoping is a process that continues throughout the planning and early stages of preparation of an environmental impact statement. Scoping is required for an environmental impact statement; scoping may be helpful during preparation of an environmental assessment, but is not required (see paragraph 46.305(a) Public involvement in the environmental assessment process). For an environmental impact statement, bureaus must use scoping to engage State, local and tribal governments and the public in the early identification of concerns, potential impacts, relevant effects of past actions and possible alternative actions. Scoping is an opportunity to introduce and explain the interdisciplinary approach and solicit information as to additional disciplines that should be included. Scoping also provides an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process. The Responsible Official shall determine whether, in some cases, the invitation requirement in 40 CFR 1501.7(a)(1) may be satisfied by including such an invitation in the notice of intent (NOI).

(b) In scoping meetings, newsletters, or by other communication methods appropriate to scoping, the lead agency must make it clear that the lead agency is ultimately responsible for determining the scope of an environmental impact statement and that suggestions obtained during scoping are only options for the bureau to consider.

§ 46.240 Establishing time limits for the NEPA process.

(a) For each proposed action, on a case-by-case basis, bureaus shall:

(1) Set time limits from the start to the finish of the NEPA analysis and documentation, consistent with the requirements of 40 CFR 1501.8 and other legal obligations, including statutory and regulatory timeframes;

(2) Consult with cooperating agencies in setting time limits; and

(3) Encourage cooperating agencies to meet established time frames.

(b) Time limits should reflect the availability of Department and bureau personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which must assemble an interdisciplinary team and/or qualified staff appropriate to the type of project to be analyzed to ensure timely completion of NEPA documents.

Subpart D—Environmental Assessments

§ 46.300 Purpose of an environmental assessment and when it must be prepared.

The purpose of an environmental assessment is to allow the Responsible Official to determine whether to prepare an environmental impact statement or a finding of no significant impact.

(a) A bureau must ensure that an environmental assessment is prepared for all proposed Federal actions, except those:

(1) That are covered by a categorical exclusion;

(2) That are covered sufficiently by an earlier environmental document as determined and documented by the Responsible Official; or

(3) For which the bureau has already decided to prepare an environmental impact statement.

(b) A bureau may prepare an environmental assessment for any proposed action at any time to:

(1) Assist in planning and decision-making;

(2) Further the purposes of NEPA when no environmental impact statement is necessary; or

(3) Facilitate environmental impact statement preparation.

§ 46.305 Public involvement in the environmental assessment process.

(a) The bureau must, to the extent practicable, provide for public notification and public involvement when an environmental assessment is being prepared. However, the methods for providing public notification and opportunities for public involvement are at the discretion of the Responsible Official.

(1) The bureau must consider comments that are timely received, whether specifically solicited or not.

(2) Although scoping is not required, the bureau may apply a scoping process to an environmental assessment.

(b) Publication of a ''draft'' environmental assessment is not required. Bureaus may seek comments on an environmental assessment if they determine it to be appropriate, such as when the level of public interest or the uncertainty of effects warrants, and may revise environmental assessments based on comments received without need of initiating another comment period.

(c) The bureau must notify the public of the availability of an environmental assessment and any associated finding of no significant impact once they have been completed. Comments on a finding of no significant impact do not need to be solicited, except as required by 40 CFR 1501.4(e)(2).

(d) Bureaus may allow cooperating agencies (as defined in § 46.225) to participate in developing environmental assessments.

§ 46.310 Contents of an environmental assessment.

(a) At a minimum, an environmental assessment must include brief discussions of:

(1) The proposal;

(2) The need for the proposal;

(3) The environmental impacts of the proposed action;

(4) The environmental impacts of the alternatives considered; and

(5) A list of agencies and persons consulted.

(b) When the Responsible Official determines that there are no unresolved conflicts about the proposed action with respect to alternative uses of available resources, the environmental assessment need only consider the proposed action and does not need to consider additional alternatives, including the no action alternative. (See section 102(2)(E) of NEPA).

(c) In addition, an environmental assessment may describe a broader range of alternatives to facilitate planning and decision-making.

(d) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(e) The level of detail and depth of impact analysis should normally be limited to the minimum needed to determine whether there would be significant environmental effects.

(f) Bureaus may choose to provide additional detail and depth of analysis as appropriate in those environmental assessments prepared under paragraph 46.300(b).

(g) An environmental assessment must contain objective analyses that support conclusions concerning environmental impacts.

§ 46.315 How to format an environmental assessment.

(a) An environmental assessment may be prepared in any format useful to facilitate planning, decision-making, and appropriate public participation.

(b) An environmental assessment may be accompanied by any other planning or decision-making document. The portion of the document that analyzes the environmental impacts of the proposal and alternatives must be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

§ 46.320 Adopting environmental assessments prepared by another agency, entity, or person.

(a) A Responsible Official may adopt an environmental assessment prepared by another agency, entity, or person, including an applicant, if the Responsible Official:

(1) Independently reviews the environmental assessment; and

(2) Finds that the environmental assessment complies with this subpart and relevant provisions of the CEQ Regulations and with other program requirements.

(b) When appropriate, the Responsible Official may augment the environmental assessment to be consistent with the bureau's proposed action.

(c) In adopting or augmenting the environmental assessment, the Responsible Official will cite the original environmental assessment.

(d) The Responsible Official must ensure that its bureau's public involvement requirements have been met before it adopts another agency's environmental assessment.

§ 46.325 Conclusion of the environmental assessment process.

Upon review of the environmental assessment by the Responsible Official, the environmental assessment process concludes with one of the following:

(1) A notice of intent to prepare an environmental impact statement;

(2) A finding of no significant impact; or

(3) A result that no further action is taken on the proposal.

Subpart E—Environmental Impact Statements

§ 46.400 Timing of environmental impact statement development.

The bureau must prepare an environmental impact statement for each proposed major Federal action significantly affecting the quality of the human environment before making a decision on whether to proceed with the proposed action.

§ 46.405 Remaining within page limits.

To the extent possible, bureaus should use techniques such as incorporation of referenced documents into NEPA analysis (46.135) and tiering (46.140) in an effort to remain within the normal page limits stated in 40 CFR 1502.7.

§ 46.415 Environmental impact statement content, alternatives, circulation and filing requirements.

The Responsible Official may use any environmental impact statement format and design as long as the statement is in accordance with 40 CFR 1502.10.

(a) *Contents*. The environmental impact statement shall disclose:

(1) A statement of the purpose and need for the action;

(2) A description of the proposed action;

(3) The environmental impact of the proposed action;

(4) A brief description of the affected environment;

(5) Any adverse environmental effects which cannot be avoided should the proposal be implemented;

(6) Alternatives to the proposed action;

(7) The relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;

(8) Any irreversible or irretrievable commitments of resources which would be involved in the proposed action should it be implemented; and

(9) The process used to coordinate with other Federal agencies, State, tribal and local governments, and persons or organizations who may be interested or affected, and the results thereof.

(b) *Alternatives*. The environmental impact statement shall document the examination of the range of alternatives (paragraph 46.420(c)). The range of alternatives includes those reasonable alternatives (paragraph 46.420(b)) that meet the purpose and need of the proposed action, and address one or more significant issues (40 CFR 1501.7(a)(2–3)) related to the proposed action. Since an alternative may be developed to address more than one significant issue, no specific number of alternatives is required or prescribed. In addition to the requirements in 40 CFR 1502.14, the Responsible Official has an option to use the following procedures to develop and analyze alternatives.

(1) The analysis of the effects of the no-action alternative may be documented by contrasting the current condition and expected future condition should the proposed action not be undertaken with the impacts of the proposed action and any reasonable alternatives.

(2) The Responsible Official may collaborate with those persons or organization that may be interested or affected to modify a proposed action and alternative(s) under consideration prior to issuing a draft environmental impact statement. In such cases the Responsible Official may consider these

modifications as alternatives considered. Before engaging in any collaborative processes, the Responsible Official must consider the Federal Advisory Committee Act (FACA) implications of such processes.

(3) A proposed action or alternative(s) may include adaptive management strategies allowing for adjustment of the action during implementation. If the adjustments to an action are clearly articulated and pre-specified in the description of the alternative and fully analyzed, then the action may be adjusted during implementation without the need for further analysis. Adaptive management includes a monitoring component, approved adaptive actions that may be taken, and environmental effects analysis for the adaptive actions approved.

(c) *Circulating and filing draft and final environmental impact statements.* (1) The draft and final environmental impact statements shall be filed with the Environmental Protection Agency's Office of Federal Activities in Washington, DC (40 CFR 1506.9).

(2) Requirements at 40 CFR 1506.9 ''Filing requirements,'' 40 CFR 1506.10 ''Timing of agency action,'' 40 CFR 1502.9 ''Draft, final, and supplemental statements,'' and 40 CFR 1502.19 ''Circulation of the environmental impact statement'' shall only apply to draft, final, and supplemental environmental impact statements that are filed with EPA.

§ 46.420 Terms used in an environmental impact statement.

The following terms are commonly used to describe concepts or activities in an environmental impact statement:

(a) *Statement of purpose and need.* In accordance with 40 CFR 1502.13, the statement of purpose and need briefly indicates the underlying purpose and need to which the bureau is responding.

(1) In some instances it may be appropriate for the bureau to describe its ''purpose'' and its ''need'' as distinct aspects. The ''need'' for the action may be described as the underlying problem or opportunity to which the agency is responding with the action. The ''purpose'' may refer to the goal or objective that the bureau is trying to achieve, and should be stated to the extent possible, in terms of desired outcomes.

(2) When a bureau is asked to approve an application or permit, the bureau should consider the needs and goals of the parties involved in the application or permit as well as the public interest. The needs and goals of the parties involved in the application or permit may be described as background information. However, this description must not be confused with the bureau's purpose and need for action. It is the bureau's purpose and need for action that will determine the range of alternatives and provide a basis for the selection of an alternative in a decision.

(b) *Reasonable alternatives.* In addition to the requirements of 40 CFR 1502.14, this term includes alternatives that are technically and economically practical or feasible and meet the purpose and need of the proposed action.

(c) *Range of alternatives.* This term includes all reasonable alternatives, or when there are potentially a very large number of alternatives then a reasonable number of examples covering the full spectrum of reasonable alternatives, each of which must be rigorously explored and objectively evaluated, as well as those other alternatives that are eliminated from detailed study with a brief discussion of the reasons for eliminating them. 40 CFR 1502.14. The Responsible Official must not consider alternatives beyond the range of alternatives discussed in the relevant environmental documents, but may select elements from several alternatives discussed. Moreover, the Responsible Official must, in fact, consider all the alternatives discussed in an environmental impact statement. 40 CFR 1505.1 (e).

(d) *Preferred alternative.* This term refers to the alternative which the bureau believes would best accomplish the purpose and need of the proposed action while fulfilling its statutory mission and responsibilities, giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the bureau's proposed action, the non-Federal entity's proposal or the environmentally preferable alternative.

§ 46.425 Identification of the preferred alternative in an environmental impact statement.

(a) Unless another law prohibits the expression of a preference, the draft environmental impact statement should identify the bureau's preferred alternative or alternatives, if one or more exists.

(b) Unless another law prohibits the expression of a preference, the final environmental impact statement must identify the bureau's preferred alternative.

§ 46.430 Environmental review and consultation requirements.

(a) Any environmental impact statement that also addresses other environmental review and consultation requirements must clearly identify and discuss all the associated analyses, studies, or surveys relied upon by the bureau as a part of that review and consultation. The environmental impact statement must include these associated analyses, studies, or surveys, either in the text or in an appendix or indicate where such analysis, studies or surveys may be readily accessed by the public.

(b) The draft environmental impact statement must list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. The environmental analyses for these related permits, licenses, and approvals should be integrated and performed concurrently. The bureau, however, need not unreasonably delay its NEPA analysis in order to integrate another agency's analyses. The bureau may complete the NEPA analysis before all approvals by other agencies are in place.

§ 46.435 Inviting comments.

(a) A bureau must seek comment from the public as part of the Notice of Intent to prepare an environmental impact statement and notice of availability for a draft environmental impact statement;

(b) In addition to paragraph (a) of this section, a bureau must request comments from:

(1) Federal agencies;

(2) State agencies through procedures established by the Governor of such state under EO 12372;

(3) Local governments and agencies, to the extent that the proposed action affects their jurisdictions; and

(4) The applicant, if any, and persons or organizations who may be interested or affected.

(c) The bureau must request comments from the tribal governments, unless the tribal governments have designated an alternate review process, when the proposed action may affect the environment of either:

(1) Indian trust or restricted land; or

(2) Other Indian trust resources, trust assets, or tribal health and safety.

(d) A bureau does not need to delay preparation and issuance of a final environmental impact statement when any Federal, State, and local agencies, or tribal governments from which comments must be obtained or requested do not comment within the prescribed time period.

§ 46.440 Eliminating duplication with State and local procedures.

A bureau must incorporate in its directives provisions allowing a State agency to jointly prepare an environmental impact statement, to the extent provided in 40 CFR 1506.2.

§ 46.445 Preparing a legislative environmental impact statement.

When required under 40 CFR 1506.8, the Department must ensure that a legislative environmental impact statement is included as a part of the formal transmittal of a legislative proposal to the Congress.

§ 46.450 Identifying the environmentally preferable alternative(s).

In accordance with the requirements of 40 CFR 1505.2, a bureau must identify the environmentally preferable alternative(s) in the record of decision. It is not necessary that the environmentally preferable alternative(s) be selected in the record of decision.

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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 "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2963/P.L. 110–383

Pechanga Band of Luiseno Mission Indians Land Transfer Act of 2007 (Oct. 10, 2008; 122 Stat. 4090)

H.R. 3480/P.L. 110–384

Let Our Veterans Rest in Peace Act of 2008 (Oct. 10, 2008; 122 Stat. 4094)

S. 1492/P.L. 110–385

To improve the quality of Federal and State data regarding the availability and quality of broadband services and to promote the deployment of affordable broadband services to all parts of the Nation. (Oct. 10, 2008; 122 Stat. 4096)

S. 1582/P.L. 110–386

Hydrographic Services Improvement Act Amendments of 2008 (Oct. 10, 2008; 122 Stat. 4106)

S. 2162/P.L. 110–387

Veterans' Mental Health and Other Care Improvements Act of 2008 (Oct. 10, 2008; 122 Stat. 4110)

S. 2816/P.L. 110–388

To provide for the appointment of the Chief Human Capital Officer of the Department of Homeland Security by the Secretary of Homeland Security. (Oct. 10, 2008; 122 Stat. 4144)

S. 3023/P.L. 110–389

Veterans' Benefits Improvement Act of 2008 (Oct. 10, 2008; 122 Stat. 4145)

S. 3128/P.L. 110–390

White Mountain Apache Tribe Rural Water System Loan Authorization Act (Oct. 10, 2008; 122 Stat. 4191)

S. 3606/P.L. 110–391

Special Immigrant Nonminister Religious Worker Program Act (Oct. 10, 2008; 122 Stat. 4193)

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