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WHEN: Tuesday, May 8, 2007
9:00 a.m.–Noon

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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8135 of April 27, 2007

Law Day, U.S.A., 2007

By the President of the United States of America

A Proclamation

Our Nation is built upon the rule of law and guided by our founding promise of freedom, equality, and justice for all. Law Day is an opportunity to celebrate the Constitution and the laws that protect our rights and liberties and to recognize our responsibility as citizens to uphold the values of a free and just society.

Generations of Americans have served the cause of justice and shaped our legal institutions to ensure that the blessings of liberty extend to every citizen. The men and women of America's legal community have worked to defend the Constitution, protect the innocent, and secure the rights of their fellow citizens. Their efforts have helped make our Nation a shining example of justice.

America's faith in the rule of law has endured through the centuries. Today, we strive to prepare our next generation of leaders to carry on America's tradition of freedom and democracy. The theme of this year's Law Day, ''Liberty Under Law: Empowering Youth, Assuring Democracy,'' highlights the importance of teaching our young people about the vital role they can play in our democratic society. We all have a duty to help our youth become responsible citizens by promoting the virtues that sustain our democracy and fostering a deeper understanding and respect for our Constitution and laws. These young men and women will shape the future of our country, and their spirit and character will help promote justice, equality, and opportunity throughout our country.

The strength of our legal system requires the ongoing commitment of every citizen. As we observe Law Day, we celebrate our Nation's legal heritage and honor those who work to advance the cause of justice.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with Public Law 87–20, as amended, do hereby proclaim May 1, 2007, as Law Day, U.S.A. I call upon all the people of the United States to observe this day with appropriate ceremonies and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of April, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–2183
Filed 5–1–07; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

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

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, 226, 246, 247 and 251

[FNS–2007–0005]

RIN 0584–AD43

Data Collection Related to the Participation of Faith-Based and Community Organizations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule is part of the Department's effort to fulfill its responsibilities under the Faith-Based and Community Initiative pursuant to Executive Orders 13279 and 13280. Under this rule, State agencies will collect and report information related to institutions and organizations that participate in specified Food and Nutrition Service (FNS) nutrition assistance programs. This information will be a new collection for the affected programs. It will enable FNS to identify the faith-based and community organizations participating in Federal nutrition assistance programs and determine the level of participation of faith-based and community organizations in the programs. It will not adversely impact the application or participation of any organization or institution currently participating in, or seeking to participate in, FNS nutrition assistance programs.

DATES: This rule is effective June 1, 2007.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Child and Adult Care and Summer Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

What Was Proposed?

On December 12, 2002, Executive Orders 13279 and 13280 were signed by the President. Executive Order 13279 instructs agency heads, including the Secretary of Agriculture, to collect data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance. Executive Order 13279 instructed agency heads, including the Secretary of Agriculture, to ''implement new policies that are necessary to ensure that their respective agencies collect data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance.'' Executive Order 13280 created the center for Faith-Based and Community Initiatives in the Department of Agriculture. The Order charged the Center to identify and eliminate regulatory, contracting, and other programmatic obstacles that prevent the full participation of faith-based and community organizations in the Department's programs, thereby increasing the effectiveness of the Department's programs.

To fulfill its responsibilities under Executive Orders 13279 and 13280, the Department of Agriculture (USDA) published in the **Federal Register** (71 FR 10914) on March 3, 2006, a rule proposing to collect information that would enable FNS to identify the faith-based and community organizations participating in FNS programs, determine the level of participation of faith-based and community organizations in its programs, and ensure that FNS' programs are open to all qualified organizations.

The rule proposed to require State agencies to report on a number of data elements for Federal fiscal years (FY) 2006 through 2009 regarding the organizations and institutions that currently participate in, and that submit an application for the purpose of contracting, or entering into an agreement with the State agency to participate in, the National School Lunch Program (NSLP); School Breakfast Program (SBP); Summer Food Service Program (SFSP); Child and Adult Care Food Program (CACFP); Special Supplemental Nutrition Program for Women, Infants and Children (WIC); Commodity Supplemental Food Program (CSFP); or with the State agency or another eligible recipient agency to participate in the Emergency Food Assistance Program (TEFAP). This rule also proposed to require TEFAP State agencies to collect information on a second tier of institutions and organizations that participate in TEFAP—emergency feeding organizations—that distribute TEFAP food at the local level.

The proposed rule indicated that State agencies in the affected programs would be required to report to FNS on four or five of the eight data elements under consideration on or before March 1 of each year from 2007 through 2010 for the prior Federal fiscal year. FNS specifically requested comments on which of the following data elements should be required:

(a) The total number of organizations that submitted an application to participate in the program;

(b) The total number of applications that were approved;

(c) The total number of organizations and institutions that sign a contract, or enter into an agreement to participate in the program;

(d) The total number of organizations and institutions that actually participate in the program;

(e) The name of each organization that actually participates in the program;

(f) The city in which the participating organization is headquartered within the state;

(g) The amount of funds provided to the participating organization, whether awarded, granted, contracted, or reimbursed; and

(h) The type of participating organization, e.g. government agency, educational institution, for-profit organization, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

II. Discussion of Comments and Their Resolutions

How Many Comments Were Received?

During the 90 day comment period, we received twenty-eight comment letters on the proposed rule, of which twenty were from State agencies, five were from food banks, and three were

from non-profit and professional organizations.

What Did Commenters Say About the Proposed Rule?

The commenters generally said they are able to comply with the data collection. However, many commenters expressed concerns about the burden being placed on State agencies and food banks with regard to some of the data elements. Seventeen commenters requested that FNS provide definitions of the terms ''faith-based organization'' and ''community organization'' to avoid inaccurate determinations. Nine commenters requested more time to implement the data collection requirements, and to delay the first Federal fiscal year for which data collection would be required until FY 2007, which would result in the first reports being due on or before March 1, 2008. Additionally, nine commenters questioned the purpose of the data collection and said that no conclusion can be made or useful data be collected. Some State agencies expressed concern that the data collection may result in having to recruit more faith-based and community organizations, saying that they are already overburdened with other new requirements in the nutrition assistance programs and that they do not have the staff resources to increase recruitment and training.

Nine commenters questioned the need to collect the data, since there are no barriers for qualified institutions to participate in FNS programs. Four commenters raised concerns that the data collection may result in discrimination against non-faith-based organizations, because the data could be used to target faith-based organization for special treatment; one said the data collection will not address discrimination; and two commenters suggested that discrimination should be addressed individually.

Discussion of Comments on the Data Elements

The proposed rule offered eight data elements that were under consideration, with the stated expectation that only four or five of these data elements would be included in the final rule. Based on comments, which tended to favor as low a reporting burden as possible, the following four data elements, with minor modification, were selected for inclusion in this final rule:

<bullet≤ The name of each organization that actually participates in the program;

<bullet≤ The city in which the participating organization is headquartered within the state and the name of the state;

<bullet≤ The amount of funds provided to the participating organization, regardless of whether those funds were awarded, granted, contracted, or reimbursed;

<bullet≤ The type of participating organization, e.g., government agency, educational institution, for-profit organization, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

Discussion of Requiring State Agencies To Document Methodology for Collecting Data

Several State agencies commented that they can collect the data, but that the collection effort will impose additional administrative burdens. In an effort to lessen the impact of the data collection effort, we have eliminated the requirement that the State agencies document their data collection methodology. However, FNS will provide State agencies with guidance on a methodology for collecting the data.

Discussion of Comments on Data Collection for TEFAP

We received comments from five food banks and a few State agencies addressing concerns that the second tier data collection would be burdensome for the food banks, which have limited staff resources. This second tier data collection was proposed for TEFAP participants only. We agree with the commenters; therefore, the data collection for TEFAP, like the other Programs, will be limited to first tier data.

Discussion of Comments on the Need for Guidance on the Level of Data Collection

Almost half of the comments we received raised concerns regarding the time and administrative burden for an agency to collect data on the participation of faith-based and community organizations. We believe many of these concerns reflected a misunderstanding that State agencies would be required to collect site level data. This rule requires only that State agencies collect data for organizations which have signed agreements for participation in each respective program.

Discussion of Comments on Definitions for Terms ''Faith-Based Organization'' and ''Community Organization''

More than half of the comments we received requested definitions for the terms ''faith-based organization'' and ''community organization''. Recently, FNS collected data similar to that to be collected in accordance with this rule, on a voluntary basis, from State agencies administering WIC. We did not provide definitions of these terms. Participating agencies were identified as government agencies, educational institutions, for profit organizations, non-profit organizations/secular, non-profit organizations/faith-based, or ''other'' without apparent confusion. Since participating agencies were able to identify themselves to WIC State agencies collecting that data, FNS has determined that it is not necessary to provide the definitions of ''faith-based organization'' and ''community organization'' for this data collection.

Discussion of Comments on Deadlines

We appreciate commenters' concerns regarding not being able to meet the March 1, 2007, deadline for reporting to FNS the data of organizations that participated in the program for Federal fiscal year 2006. We will extend the submission date to August 31, 2007.

Discussion of Comments on Concerns That the Rule Will Have Adverse Results

Some commenters said the proposed rule raised concerns of participation barriers that do not exist in FNS's nutrition assistance programs and expressed uneasiness that the rule may have adverse effects on the participation of eligible institutions. More than one third of the commenters said there are no barriers to participation for qualified organizations and that faith-based and community-based organizations are already well represented in FNS's food assistance programs. Other commenters expressed concerns that the data collection would be intrusive, would encourage the approval of unqualified faith-based organizations to participate in the programs, and would result in discriminatory practices.

As stated in the proposed rule and in the preamble of this rule, FNS has concluded that the data collection will not adversely impact the application or participation of any organization or institution currently participating in, or seeking to participate in, FNS nutrition assistance programs. Furthermore, the data collection should not result in the approval of unqualified faith-based organizations, or in other discriminatory practices that would be in violation of Federal laws and regulations. The purpose of this data collection is to fulfill FNS's responsibilities under Executive Orders 13279 and 13280.

Discussion of Comments on the Usefulness of the Data Collection

Almost one third of the commenters doubt the usefulness and relevancy of

the data collection. As stated in the preamble of the proposed rule, the Department must fulfill its responsibilities under Executive Orders 13279 and 13280. Section 3(b) of Executive Order 13279 instructs the Secretary to implement new policies to collect data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance. This rule permits FNS to comply with that instruction. The consequences of non-collection would be an inability to comply fully with the executive orders.

III. Procedural Matters

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Impact Analysis

Need for Action

Section 3(b) of Executive Order 13279 provides the Secretary with authority to collect data regarding the participation of faith-based and community organizations in social service programs that receive Federal financial assistance. The consequence of non-collection would be an inability to determine the numbers of participating faith-based and community organizations and a failure to comply with Executive Orders 13279 and 13280.

Benefits

This final rule would help the Department to implement Executive Orders 13279 and 13280. Collecting information on faith-based and community organizations would enable FNS to determine the level of participation in FNS programs by those organizations and help ensure that its programs are open to all eligible organizations.

Costs

The cost implications of this final rule are minor. State agencies collect data for organizations that participate in the programs for each of Federal FYs 2006 through 2009, including those that participated only for part of the fiscal year. Each State agency varies in the number of participating organizations, so the overall additional time burden will differ among programs.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. The data collection that would be implemented would enable FNS to identify the faith-based and community organizations participating in FNS programs, determine the level of participation of faith-based and community organizations in its programs, ensure that FNS's nutrition assistance programs are open to all eligible organizations, as mandated by Executive Orders 13279 and 13280, and evaluate the effectiveness of the Department's outreach efforts. While the effect of this rule would require organizations seeking to participate or participating in affected FNS programs to provide the requested information at the time of application and at other times, these reporting changes will not have a significant economic impact on those small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes a requirement 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, FNS generally prepares a written statement, including a cost-benefit analysis. This is done for proposed and final rules that have ''Federal mandates'' which may result in expenditures of $100 million or more in any one year by State, local, or tribal governments, in the aggregate, or by the private sector. When this statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives. It must then adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under regulatory provisions of Title II of the UMRA) that impose costs on State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

National School Lunch Program; School Breakfast Program; Summer Food Service Program; Child and Adult Care Food Program; Special Supplemental Nutrition Program for Women, Infants and Children; and the Commodity Supplemental Food Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553, 10.559, 10.558, 10.557, and 10.565, respectively. The Emergency Food Assistance Program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.568 and 10.569. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice published at 48 FR 29114, June 24, 1983, this program is included within the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this final rule would not in any way limit or reduce participants' ability to participate in FNS's nutrition assistance programs on the basis of race, color, national origin,

sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The information collection contained in this rule has been approved under OMB No. 0584–0540.

Burden estimates for the proposed rule, Data Collection Related to Institutions and Organizations, were published in the **Federal Register** on March 3, 2006, at 71 FR 10914. In accordance with the Paperwork Reduction Act of 1995, the information reporting and recordkeeping requirements included in the proposed rule outlined the changes in the information collection burden. OMB accepted public comments on FNS's estimated reporting and recordkeeping burden. Commenters indicated that the proposed reporting and recordkeeping requirements are too burdensome and the proposed estimated annual reporting and recordkeeping burden hours under the Paperwork Reduction Act of 1995 were too low. As a result of public comment, FNS reviewed and adjusted the burden estimates to reflect (1) the elimination of one proposed provision which would have required State agencies to document their methodology; (2) the actual data elements required by this final rule; and (3) the elimination of second tier data collection for TEFAP. The estimated burden hours for the School Breakfast Program were also reduced since in most instances school food authorities that participate in the School Breakfast Program also participate in the National School Lunch Program. And since data is being collected for both programs, three of the four data elements being collected will be the same. These include the name, location, and type of organization. Only the amount of funds provided for the Program will have to be determined separately. We have taken these different circumstances into consideration in our submission for clearance by OMB under a single docket number. The burden associated with OMB No. 0584–0540, Data Collection Related to Institutions and Organizations, is cleared as follows:

Programs	Number of respondents	Number responses per respondent	Hours per response	Annual burden hours
National School Lunch Program:				
§ 210.23(d)(1)	57	364	2	41,496
§ 210.23(d)(2)	57	1	0.5	29
School Breakfast Program:				
§ 220.13(1)(1)	57	290	1	16,530
§ 210.23(1)(2)	57	1	0.25	14.25
Summer Food Service Program:				
§ 225.18(i)(1)	53	71	2	7,526
§ 210.18(i)(2)	53	1	0.5	27
Child and Adult Care Food Program:				
§ 210.26(g)(1)	55	386	2	42,460
§ 210.26(g)(2)	55	1	0.5	28
Special Supplemental Nutrition Program for Women, Infants and Children:				
§ 246.26(h)(1)	53	35	2	3,710
§ 246.26(h)(2)	53	1	0.5	27
Commodity Supplemental Food Program:				
§ 247.29(d)(1)	35	4	2	280
§ 247.29(d)(2)	35	1	0.5	18
The Emergency Food Assistance Program:				
§ 251.10(i)(1)	56	29	2	3,248
§ 251.10(i)(2)	56	1	0.5	28

Total No. of Respondents: 166.

Total Annual Responses: 66,256.

Total Annual Burden: 115,421.25.

E-Government Act Compliance

FNS 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. FNS will request that State agencies respond to the data collection electronically, using an electronic report template which FNS will provide.

List of Subjects

7 CFR Part 210

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, National School Lunch Program.

7 CFR Part 220

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

7 CFR Part 225

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 246

Food assistance programs, Food donations, Grant programs-social programs, American Indians, Infants and children, Maternal and child health,

Nutrition, Nutrition education, Public assistance programs, WIC, Women.

7 CFR Part 247

Agricultural commodities, Food assistance programs, Infants and children, Maternal and child health, Public assistance programs, nutrition, women, aged.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, American Indians, Infants and children, Commodity loan programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

■ Accordingly, 7 CFR Parts 210, 220, 225, 226, 246, 247 and 251 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.23, a new paragraph (d) is added to read as follows:

§ 210.23 Other responsibilities.

* * * * *

(d) *Data collection related to school food authorities.* (1) Each State agency must collect data related to school food authorities that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those school food authorities that participated only for part of the fiscal year. Such data shall include:

(i) The name of each school food authority;

(ii) The city in which each participating school food authority was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the amount of federal funds reimbursed to each participating school food authority; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (d)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 1. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 2. In § 220.13, a new paragraph (l) is added to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(l) *Data collection related to school food authorities.* (1) Each State agency must collect data related to school food authorities that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those school food authorities that participated only for part of the fiscal year. Such data shall include:

(i) The name of each school food authority;

(ii) The city in which each participating school food authority was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the amount of federal funds reimbursed to each participating school food authority; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (l)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 1. The authority citation for part 225 is revised to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 2. In § 225.18, a new paragraph (i) is added to read as follows:

§ 225.18 Miscellaneous administrative provisions.

* * * * *

(i) *Data collection related to sponsors.* (1) Each State agency must collect data related to sponsors that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those sponsors that participated only for part of the fiscal year. Such data shall include:

(i) The name of each sponsor;

(ii) The city in which each participating sponsor was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the sum of the amount of federal funds reimbursed for operating and administrative cost; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (i)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 1. The authority citation for part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 2. In § 226.25, a new paragraph (g) is added to read as follows:

§ 226.25 Other provisions.

* * * * *

(g) *Data collection related to organizations.* (1) Each State agency must collect data related to institutions that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those institutions that participated only for part of the fiscal year. Such data shall include:

(i) The name of each institution;

(ii) The city in which each participating institution was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the sum of the amount of federal funds reimbursed for operating and, where applicable, administrative costs; and

(iv) The type of participating organization, e.g., government agency, educational institution, for-profit organization, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (g)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

■ 1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

■ 2. In § 246.26, a new paragraph (j) is added to read as follows:

§ 246.26 Other provisions.

* * * * *

(j) *Data collection related to local agencies.* (1) Each State agency must collect data related to local agencies that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those local agencies that participated only for part of the fiscal year. Such data shall include:

(i) The name of each local agency;

(ii) The city in which each local agency was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the amount of federal funds provided for nutrition services and administration to each participating local agency; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (j)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

■ 1. The authority citation for part 247 continues to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); Pub. L. 107–171.

■ 2. In § 247.29, a new paragraph (d) is added to read as follows:

§ 247.29 Reports and recordkeeping.

* * * * *

(d) *What data must the State agency collect related to local agencies?* (1) Each State agency must collect data related to local agencies that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009; including those local agencies that participated only for part of the fiscal year. Such data shall include:

(i) The name of each local agency;

(ii) The city in which each participating local agency was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the amount of federal administrative funds provided to each participating local agency; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (d)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

PART 251—THE EMERGENCY FOOD ASSISTANCE PROGRAM

■ 1. The authority citation for part 251 continues to read as follows:

Authority: 7 U.S.C. 7501–7516.

■ 2. In § 251.10, a new paragraph (i) is added to read as follows:

§ 251.10 Miscellaneous provisions.

* * * * *

(i) *Data collection related to eligible recipient agencies.* (1) Each State agency must collect data related to eligible recipient agencies that have an agreement with the State agency to participate in the program for each of Federal fiscal years 2006 through 2009, including those eligible recipient agencies that participated only for part of the fiscal year. Such data shall include:

(i) The name of each eligible recipient agency;

(ii) The city in which each participating eligible recipient agency was headquartered and the name of the state;

(iii) The amount of funds provided to the participating organization, i.e., the sum of the amount of federal administrative funds plus the value of the commodities purchased under Section 214 of the Emergency Food Assistance Act of 1983 provided to each participating eligible recipient agency; and

(iv) The type of participating organization, e.g., government agency, educational institution, non-profit organization/secular, non-profit organization/faith-based, and ''other.''

(2) On or before August 31, 2007, and each subsequent year through 2010, State agencies must report to FNS data as specified in paragraph (i)(1) of this section for the prior Federal fiscal year. State agencies must submit this data in a format designated by FNS.

Dated: April 23, 2007.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 07–2173 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

New Animal Drugs; Change of Sponsor's Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor's address for Alpharma, Inc.

DATES: This rule is effective May 2, 2007.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., Ft. Lee, NJ 07024, has informed FDA of a change of address to 440 Rte. 22, Bridgewater, NJ 08807. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), revise the entry for ''Alpharma, Inc.''; and in the table in paragraph (c)(2), revise the entry for ''046573'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Alpharma, Inc., 440 Rte. 22, Bridgewater, NJ 08807.	046573
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
046573	Alpharma, Inc., 440 Rte. 22, Bridgewater, NJ 08807
* * * * *	

Dated: April 24, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–8322 Filed 5–1–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fenbendazole Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to correct an inadvertent error in the conditions of use of fenbendazole paste in horses and cattle. This action is being taken to improve the accuracy of the animal drug regulations.

DATES: This rule is effective May 2, 2007.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9019, e-mail: *george.haibel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is amending the animal drug regulations in 21 CFR 558.95 to correct an inadvertent error in the conditions of use of fenbendazole paste in horses and cattle. The error in the agency's regulations was introduced in a final rule reflecting the approval of a supplemental new animal drug application that published in the **Federal Register** on March 9, 2007 (72 FR 10595). This action is being taken to improve the accuracy of the animal drug regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.905c is revised to read as follows:

§ 520.905c Fenbendazole paste.

(a) *Specifications*. Each gram of paste contains 100 milligrams (mg) fenbendazole (10 percent).

(b) *Sponsor*. See No. 057926 in § 510.600(c) of this chapter.

(c) *Related tolerances*. See § 556.275 of this chapter.

(d) *Special considerations*. See § 500.25 of this chapter.

(e) *Conditions of use*—(1) *Horses*—(i) *Indications for use and amounts*—(A) For control of large strongyles (*Strongylus edentatus*, *S. equinus*, *S. vulgaris*), small strongyles, pinworms (*Oxyuris equi*), and ascarids (*Parascaris equorum*): 2.3 mg per pound (/lb) of body weight, or for foals and weanlings (less than 18 months of age), 4.6 mg/lb of body weight. Retreatment at intervals of 6 to 8 weeks may be required.

(B) For control of arteritis caused by the fourth-stage larvae of S. vulgaris: 4.6 mg/lb of body weight daily for 5 days. Treatment should be initiated in the spring and repeated in 6 months.

(C) For treatment of encysted mucosal cyathostome (small strongyle) larvae including early third-stage (hypobiotic), late third-stage, and fourth-stage larvae: 4.6 mg/lb of body weight daily for 5 consecutive days.

(D) Fenbendazole paste 10 percent may be used concomitantly with approved forms of trichlorfon for the indications provided in paragraph (e)(1)(i)(A) of this section and for treating infections of stomach bots as provided in § 520.2520.

(ii) *Limitations*. Do not use in horses intended for human consumption.

(2) *Cattle*—(i) *Amount*. 2.3 mg/lb of body weight. Retreatment may be needed after 4 to 6 weeks.

(ii) *Indications for use*. For the removal and control of lungworms (*Dictyocaulus viviparus*), stomach worms (*Haemonchus contortus*, *Ostertagia ostertagi*, *Trichostrongylus axei*), and intestinal worms (*Bunostomum phlebotomum*, *Nematodirus helvetianus*, *Cooperia punctata*, *C. oncophora*, *Trichostrongylus colubriformis*, and *Oesophagostomum radiatum*).

(iii) *Limitations*. Cattle must not be slaughtered within 8 days following last treatment.

Dated: April 24, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–8391 Filed 5–1–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–06–112]

RIN 1625–AA87

Security Zone; Severn River and College Creek, Annapolis, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent security zone on certain waters of the Severn River and College Creek. This action is necessary to ensure the security of high-ranking public officials and safeguard

the public at large against terrorist acts or incidents during activities associated with the U.S. Naval Academy graduation ceremony, held annually on the Friday before the Memorial Day holiday in May. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

DATES: This rule is effective May 25, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–06–112 and are available for inspection or copying at Commander, Coast Guard Sector Baltimore, 2401 Hawkins Point Road, Building 70, Waterways Management Division, Baltimore, Maryland 21226–1791 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 12, 2007, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Severn River and College Creek, Annapolis, MD'' in the **Federal Register** (72 FR 6512). We received four letters commenting on the proposed rule. No public meeting was requested, and none was held. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. It took longer to respond to comments than expected. While we did not change the rule, in response to comments we examined ways to ensure that enforcement of the rule would cause minimal disruption to local vessel operators.

Background and Purpose

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. Due to increased awareness that future terrorist attacks are possible the Coast Guard, as lead federal agency for maritime homeland security, has determined that the Captain of the Port Baltimore must have the means to be aware of, deter, detect, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while still maintaining our freedoms and sustaining the flow of commerce. This security zone is part of a comprehensive port security regime designed to safeguard human life, vessels, and waterfront facilities against sabotage or terrorist attacks.

In this particular rulemaking, to address the aforementioned security concerns before, during and after the annual U.S. Naval Academy graduation ceremony, and to take steps to prevent the catastrophic impact that a terrorist attack against high-ranking public officials and the public at large before, during and after this highly-publicized event would have on the public interest, the Captain of the Port, Baltimore, Maryland is establishing a security zone upon all waters of the Severn River, from shoreline to shoreline, bounded by a line drawn from Horseshoe Point, at 38[deg]59'47.6'' N, 076[deg]29'33.2'' W; eastward across the Severn river to a point located at 39[deg]00'01.5'' N, 076[deg]29'08.5'' W; and a line drawn from Biemans Point, at 38[deg]59'14.4'' N, 076[deg]28'30.1'' W; westward across the Severn River to a point 38[deg]59'03.5'' N, 076[deg]28'50.0'' W, located on the Naval Academy waterfront. This security zone includes the waters of College Creek eastward of the King George Street Bridge.

This security zone will help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against a large number of participants during the event. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on the U.S. Naval Academy before, during and after its annual graduation ceremony would have on the large number of participants, and the surrounding area and communities, a security zone is prudent for this type of event.

Discussion of Comments and Changes

The Coast Guard received a total of four pieces of written correspondence in response to the NPRM. No public meeting was requested and none was held. What follows is a review of, and the Coast Guard's response to, the issues and questions that were presented by these commenters concerning the proposed regulations.

(1) All commenters indicated that the proposed rule would effectively cut off the Severn River to all waterway traffic, including commercial and recreational vessels.

We do not intend to restrict commercial and recreational vessels from transiting to or departing from areas outside the zone. Similar to past U.S. Naval Academy graduation ceremony activities, during the enforcement of the temporary security zone on the Severn River and College Creek in Annapolis, Maryland, the COTP will allow persons and vessels not deemed a security threat to be authorized by on-scene patrol vessels to enter, operate within, and depart the zone without loitering, anchoring, fishing and crabbing.

(2) Two commenters indicated that the proposed rule would be ineffective, since the U.S. Naval Academy graduation ceremony is held a considerable distance away from the Severn River and College Creek, at the Navy-Marine Corps Memorial Stadium.

Activities associated with the U.S. Naval Academy graduation ceremony require that security measures be taken at locations other than during the commencement address.

(3) Two commenters indicated that the proposed rule would be insuffient, since the zone does not encompass all of the U.S. Naval Academy grounds.

In an attempt to impose the least amount of adverse impact on waterway traffic, the security measures expected before, during, and after the U.S. Naval Academy graduation ceremony do not require further restrictions upon adjacent waterways.

After reviewing all comments, no changes to the proposed regulatory text were made. Our final rule remains the same as our proposed rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This security zone will encompass only a small portion of the waterway and vessels or persons may be allowed to enter this zone with permission of the Captain of the Port, Baltimore, Maryland.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Severn River and College Creek from 7:30 a.m. to 2 p.m. on the Friday before the Memorial Day holiday annually. This security zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for less than seven hours, on one day, annually. Although the security zone will apply to the entire width of the river, smaller vessels not constrained by their draft, which are more likely to be small entities, may request permission from the Captain of the Port Baltimore, Maryland to enter the zone at telephone number (410) 576–2693, or through Coast Guard vessels enforcing the zone via Marine Band Radio, VHF channel 16 (156.8 MHz). Additionally, before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. Because the zone is of limited size, it is expected that there will be minimal disruption to the maritime community.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. However, we received no requests for assistance from any small entities.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.509 to read as follows:

§ 165.509 Security Zone; Severn River and College Creek, Annapolis, MD.

(a) *Definitions.* For purposes of this section, the *Captain of the Port, Baltimore, Maryland* means the Commander, Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his or her behalf.

(b) *Location.* The following area is a security zone: All waters of the Severn River, from shoreline to shoreline, bounded by a line drawn from Horseshoe Point, at 38[deg]59'47.6'' N, 076[deg]29'33.2'' W; eastward across the Severn river to a point located at 39[deg]00'01.5'' N, 076[deg]29'08.5'' W; and a line drawn from Biemans Point, at 38[deg]59'14.4'' N, 076[deg]28'30.1'' W; westward across the Severn River to a point 38[deg]59'03.5'' N, 076[deg]28'50.0'' W, located on the Naval Academy waterfront. This security zone includes the waters of College Creek eastward of the King George Street Bridge (NAD 1983).

(c) *Regulations.* (1) The general regulations governing security zones found in § 165.33 apply to the security zone described in paragraph (b) of this section.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland.

(3) Persons or vessels requiring entry into or passage through the security zone must first request authorization from the Captain of the Port, Baltimore to seek permission to transit the area. The Captain of the Port, Baltimore, Maryland can be contacted at telephone number (410) 576–2693. The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Baltimore, Maryland and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced annually on the Friday before the Memorial Day holiday in May from 7:30 a.m. to 2 p.m. local time.

Dated: April 20, 2007.

Brian D. Kelley,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. E7–8447 Filed 5–1–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0323; FRL–8122–8]

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends the tolerance expression for glyphosate to include the dimethylamine (DMA) salt of glyphosate. Dow AgroScienes, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 2, 2007. Objections and requests for hearings must be received on or before July 2, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0323. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available 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 telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Vickie Walters, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: 703-305-5704; e-mail address: *walters.vickie.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:

<bullet≤ Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

<bullet≤ Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

<bullet≤ Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

<bullet≤ Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to

assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0323 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 July 2, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2006–0323, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of February 7, 2007 (72 FR 5706) (FRL–8111–8), 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 6F7025) by Dow AgroSciences, LLC, 9330 Zionsville Rd, Indianapolis, IN 46268 . The petition requested that 40 CFR 180. 364 (a) be amended by adding glyphosate dimethylammoniun salt or dimethalamine salt of glyphosate (n-phosphonemethyl)glycine resulting from the application of glyphosate and the isopropylamine salt of glyphosate, ethanolamine salt of glyphosate, and the ammonium potassium salt of glyphosate. That notice referenced a summary of the petition prepared by Dow AgroSciences, LLC, the registrant, which has been placed in the public docket, *http://www.regulations.gov.* Dow requested this change to support registration of pesticide products containing the dimethylamine salt of glyphosate. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA is revising the tolerance expression for 40 CFR 180.364 (a) to read: ''Tolerances are established for residues of glyphosate *N*-(phosphonomethyl)glycine resulting from the application of glyphosate, the isoprpylamine salt of glyphosate, the ethanolamine salt of glyphosate, and the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, the potassium salt of glyphosate, in or on the following food commodities:'' This change corrects a spelling error that occurred in the notice of filing and deletes glyphosate dimethylammonium salt, as this is another name for the dimethylamine salt of glyphosate.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of the 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 the 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 the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' These provisions were added to the FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned- revising the tolerance expression for 40 CFR 180.364 (a) to read: ''Tolerances are established for residues of glyphosate *N*-(phosphonomethyl)glycine resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate, in or on the following food commodities.'' The DMA salt of glyphosate dissociates to glyphosate and the dimethylamine ion. Because the DMA salt disassociates to glyphosate acid, as does the currently listed salts, no increased tolerances or risks are expected from the addition of the dimethylamine salt of glyphosate to the tolerance expression. Toxicological profile and current risk assessments for glyphosate are discussed in the final rule published in the **Federal Register** of December 20, 2006 (71 FR 76180) (FRL-8105-9) which established tolerances for residues of glyphosate in or on sunflower; safflower; noni; pea, dry; and vegetable, legume, group 6 except soybean and pea, dry. Based on the risk assessments discussed in the notice above, EPA concludes that there is a reasonable certainty that no harm will result to the general population and to infants and children from aggregate exposure glyphosate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant and livestock commodities. These methods include

gas liquid chromatography (GLC) (Method I in Pesticides Analytical Manual (PAM II; the limit of detection is 0.05 part per million (ppm)) and High Performance Liquid Chromatography (HPLC) with fluorometric detection. The HPLC procedure has undergone successful Agency validation, and was recommended for inclusion in PAM II. A gas chromatography/mass spectrometry (GC/MS) method for glyphosate crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL).

The HPLC and GC/MS 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

Codex and Mexican maximum residue levels (MRLS) are established for residues of glyphosate per se and Canadian MRLs are established for the combined residues of glyphosate and animomethylphosphonic acid (AMPA) on a variety raw agricultural commodities. No international harmonization issues are associated with the addition of the dimethylamine salt of glyphosate to the tolerance expression.

V. Conclusion

Therefore, tolerance expression for 40 CFR 180.364 (a) is revised to read: ''Tolerances are established for residues of glyphosate *N*-(phosphonomethyl)glycine resulting from the application of glyphosate, the isoprpylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate, in or on the following food commodities.''

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: April 17, 2007.

Lois Rossi,

Director, Registration Division, 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 180.364, paragraph (a) is amended by revising the introductory text to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) *General*. Tolerances are established for residues of glyphosate *N*-(phosphonomethyl)glycine resulting from the application of glyphosate, the isopropylamine salt of glyphosate, the ethanolamine salt of glyphosate, the dimethylamine salt of glyphosate, the ammonium salt of glyphosate, and the potassium salt of glyphosate in or on the following food commodities:

* * * * *

[FR Doc. E7–8000 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–1715; MB Docket No. 05–328; RM–10577; RM–11343; RM–11344]

Radio Broadcasting Service; Broken Bow and Millerton, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division: grants a counterproposal (RM–11343) filed by Charles Crawford to allot Channel 265C2 at Millerton, Oklahoma; dismisses a petition for rule making (RM–10577) per petitioner Jeraldine

Anderson's request; and dismisses a counterproposal (RM–11344) per petitioner Katherine Pyeatt's request. Channel 265C2 can be allotted at Millerton, Oklahoma in compliance with the Commission's minimum distance separation requirements at 34–03–37 North Latitude and 94–54–04 West Longitude with a site restriction of 13.3 kilometers (8.2 miles) northeast of the community's reference.

DATES: Effective May 31, 2007.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–328, adopted April 13, 2007, and released April 16, 2007. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* 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

Radio, Radio broadcasting.

■ As stated 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.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Millerton, Channel 265C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–8359 Filed 5–1–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–1713; MB Docket No. 06–77; RM–11324; RM–11334]

Radio Broadcasting Services; Burkesville, KY; Belle Meade, TN; Edinburgh, IN; Goodlettsville, TN; Greensburg, KY; Hendersonville, TN; Hodgenville, KY; Hope, IN; Horse Cave, KY; Lebanon, Lebanon Junction, Lewisport, Louisville, Lyndon, KY; Manchester and Millersville, TN; New Haven, KY; Springfield and St. Matthews, KY; Tell City and Versailles, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule, dismissal of petition for reconsideration.

SUMMARY: This document dismisses a Petition for Reconsideration filed by Indiana University and denies a Petition for Reconsideration filed by Indiana Community Radio Corporation both directed to the *Report and Order* in this proceeding. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MB Docket No. 06–77, adopted April 13, 2007, and released April 16, 2007. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of this *Memorandum Opinion and Order* pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–8360 Filed 5–1–07; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 72, No. 84
Wednesday, May 2, 2007

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149856–03]

RIN 1545–BD01

Dependent Child of Divorced or Separated Parents or Parents Who Live Apart

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to a claim that a child is a dependent by parents who are divorced, legally separated under a decree of separate maintenance, separated under a written separation agreement, or who live apart at all times during the last 6 months of the calendar year. The proposed regulations reflect amendments under the Working Families Tax Relief Act of 2004 (WFTRA) and the Gulf Opportunity Zone Act of 2005 (GOZA).

DATES: Written or electronic comments or a request for a public hearing must be received by July 31, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–149856–03), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–149856–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS internet site via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–149856–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Victoria Driscoll (202) 622–4920; concerning the submission of comments and/or a request for a hearing, Regina Johnson (202) 622–3175 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The IRS and the Department of the Treasury, as part of their continuing efforts to reduce paperwork and respondent burden, invite the general public to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data are 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 is properly assessed. The IRS and the Department solicit comments on the information collection request (ICR) included in this proposed regulatory action. A copy of the ICR may be obtained by contacting the OMB Unit, SE:W:CAR:MP:T:T:SP, Internal Revenue Service, Room 6406, 1111 Constitution Ave., NW., Washington, DC 20224.

The collection of information in this proposed rule is being reviewed by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 in connection with OMB Control Number 1545–0074. This control number is assigned to all information collections associated with individual tax returns (series 1040 and associated forms and schedules, and related regulatory information collections). Information collections associated with control number 1545–0074 are subject to annual public comment and approval by OMB in accordance with the Paperwork Reduction Act.

The collection of information in these proposed regulations is in § 1.152–4(d). The information will help the IRS determine if a taxpayer may claim a child as a dependent when the parents of the child are divorced or separated or lived apart at all times during the last six months of a calendar year. The collection of information is required to obtain a benefit. The information will be reported on IRS Form 8332. The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is included in the estimates shown in the instructions for their individual income tax return.

The public is invited to provide comments on this information collection, particularly comments that:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

Evaluate the burden of the proposed collection of information, including how the burden on those who are to respond may be minimized, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses; and

Enhance the quality, utility, and clarity of the information to be collected.

Comments should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Department of the Treasury. Comments may be submitted through July 2, 2007.

Background

This document contains proposed amendments to 26 CFR part 1 relating to section 152(e) and the entitlement of divorced or separated parents or parents who live apart at all times during the last 6 months of the calendar year to claim a child as a dependent.

Under section 151, a taxpayer may deduct an exemption amount for a dependent. Section 152, as amended by section 201 of WFTRA (Public Law No. 108–311, 118 Stat. 1166), defines *dependent* in general as a qualifying child or a qualifying relative.

Section 152(c), which defines qualifying child, states that the qualifying child must have the same principal place of abode as the taxpayer for more than one-half of the taxable year. Section 152(c)(1)(B). Section 152(c)(4)(B) provides that, if both parents of a child claim the child as a qualifying child and do not file a joint return together, the child is treated as the qualifying child of the parent with whom the child resides for the longer period of time during the taxable year. If the child resides with both parents for an equal amount of time during the

taxable year, the child is treated as the qualifying child of the parent with the higher adjusted gross income. As part of the definition of a qualifying relative, section 152(d)(1)(C) requires that the taxpayer provide over one-half of the individual's support for the calendar year. The principal place of abode requirement of section 152(c)(1)(B), the tie-breaking rule of section 152(c)(4)(B), and the support rule of section 152(d)(1)(C), do not apply if section 152(e) applies.

Section 152(e), which was amended by section 404 of GOZA (Public Law No. 109–135, 119 Stat. 2577), provides rules for parents who (1) are divorced or legally separated under a decree of divorce or separate maintenance, (2) are separated under a written separation agreement, or (3) live apart at all times during the last 6 months of the calendar year. Under section 152(e)(1), a child of parents described in section 152(e) is treated as the qualifying child or qualifying relative of the noncustodial parent if the child receives over one-half of the child's support during the calendar year from the child's parents, the child is in the custody of one or both of the child's parents for more than one-half of the calendar year, and the requirements of section 152(e)(2) or section 152(e)(3) are met.

The requirements of section 152(e)(2) are met if the custodial parent signs a written declaration that the custodial parent will not claim a child as a dependent for a taxable year and the noncustodial parent attaches the declaration to the noncustodial parent's tax return. The requirements of section 152(e)(3) are met if a qualified pre-1985 instrument allocates the dependency exemption to the noncustodial parent and the noncustodial parent provides at least $600 for the support of the child during the calendar year.

Section 152(e)(4) defines *custodial parent* as the parent having custody for the greater portion of the calendar year and *noncustodial parent* as the parent who is not the custodial parent.

If a child is treated as the qualifying child or qualifying relative of the noncustodial parent under section 152(e), then that parent may claim the child for purposes of the dependency deduction under section 151 and the child tax credit under section 24, if the other requirements of those provisions are met. Whether a child is a qualifying child for purposes of head of household filing status, the child and dependent care credit, or the earned income credit, is determined without regard to section 152(e). See sections 2(b)(1)(A)(i) (head of household), 21(e)(5) (dependent care credit), and 32(c)(3) (earned income credit).

The special rule of section 152(e)(1) for parents living apart during the last six months of the calendar year was added by section 423(a) of the Deficit Reduction Act of 1984 (Public Law No. 98–369, 98 Stat. 494) (the 1984 Act). The 1984 Act also amended the exceptions in section 152(e)(2). Regulations under section 152(e)(1) and (2) (§ 1.152–4 of the Income Tax Regulations) were published on March 20, 1971, and amended on October 15, 1971, and August 20, 1979. Temporary regulations reflecting the amendments made by the 1984 Act (§ 1.152–4T) were published on August 31, 1984.

Explanation of Provisions

These proposed regulations update § 1.152–4 by deleting obsolete provisions, revising language to improve clarity, and incorporating the provisions of § 1.152–4T. The proposed regulations also provide guidance on issues that have arisen in the administration of section 152(e).

1. Definition of Custodial Parent

Under the proposed regulations, the custodial parent is the parent with whom the child resides for the greater number of nights during the calendar year. The noncustodial parent is the parent who is not the custodial parent. The proposed regulations further provide that, if a child is temporarily absent from a parent's home for a night, the child is treated as residing with the parent with whom the child would have resided for the night. However, if the child resides with neither parent for a night, for example because another party is entitled to custody of the child for that night, the child is treated as not residing with either parent for that night. Comments are requested specifically on alternative methods of allocating nights when a child resides with neither parent and whether nights residing with neither parent should not be allocated to either parent. The proposed regulations provide a tie-breaking rule that, if a child resides with each parent for an equal number of nights during the calendar year, the parent with the higher adjusted gross income for the calendar year is treated as the custodial parent. Cf. section 152(c)(4)(B).

Sections 151 and 152, not state law, determine whether a divorced or separated parent may claim an exemption for a child for Federal income tax purposes. A state court order or decree does not operate to allocate the federal exemption between parents.

2. Requirements for Release of the Right To Claim a Child

Section 152(e)(2) provides that a custodial parent may release a claim to an exemption for a child by signing a written declaration (in such form and manner as the Secretary may prescribe by regulations) that he or she will not claim the child as a dependent. The noncustodial parent must attach the written declaration to the tax return to claim a dependency exemption for the child. Section 1.152–4T, Q&A–3, states that the written declaration may be made on a form developed by the IRS. Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, currently is used for this purpose. The temporary regulations further provide that any declaration not made on that form must conform to the substance of the form. Section 1.152–4T, Q&A–4, states that a claim to an exemption may be released for a single year, for a number of years, or for all future years, as specified in the declaration.

The proposed regulations incorporate these rules and further provide that a written declaration must include an unconditional statement that the custodial parent will not claim the child as a dependent for the specified year or years. A statement is unconditional if it does not expressly condition the custodial parent's waiver of the right to claim the child as a dependent on the noncustodial parent's meeting of an obligation such as the payment of support. The written declaration must specify the year or years for which the release is effective. A written declaration that does not specify a year or years has no effect. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year the release is executed and all subsequent taxable years. A court order or decree may not serve as the written declaration required by section 152(e)(2).

3. Revocation of Release of Claim

The proposed regulations provide that a custodial parent who released the right to claim a child may revoke the release for future taxable years by providing written notice of the revocation to the other parent. The revocation may be made on a form designated by the IRS, such as Form 8332, which may be revised for this purpose, or by a written declaration that conforms to the substance of that form, whether or not the release was made on the form, and must specify the year or years for which the revocation is effective. A revocation that does not

specify a year or years has no effect. A revocation that specifies all future years is treated as specifying the first taxable year after the taxable year the revocation is executed and all subsequent taxable years. The revocation may be effective no earlier than the taxable year that begins in the first calendar year after the calendar year in which the parent revoking the release provides notice of the revocation to the other parent. The parent revoking the release must attach the original or a copy of the revocation to the parent's tax return for any taxable year the parent claims the exemption as a result of the revocation, and keep a copy of the revocation and evidence of delivery of written notice of revocation to the noncustodial parent.

4. Never Married Parents

In *King* v. *Commissioner*, 121 T.C. 24 (2003), the United States Tax Court decided that section 152(e) applies to parents who had never married each other. The parents lived apart for the years at issue, and each had claimed a dependency deduction for the same child. In concluding that the Form 8332 executed by the custodial parent released her claim to the deduction, the court determined that section 152(e)(1)(A)(iii), which refers to parents who ''live apart at all times during the last 6 months of the calendar year,'' encompasses both married parents and parents who never married each other. The proposed regulations follow the decision in *King* v. *Commissioner.*

5. Effective Date

The regulations are proposed to apply to taxable years beginning after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

This notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.152–4 also issued under 26 U.S.C. 152(e).

Par. 2. Section 1.152–4 is revised to read as follows:

§ 1.152–4 Special rule for a child of divorced or separated parents or parents who live apart.

(a) *In general.* A taxpayer may claim a dependency deduction for a child (as defined in section 152(f)(1)) only if the child is the qualifying child of the taxpayer under section 152(c) or the qualifying relative of the taxpayer under section 152(d). Section 152(c)(4)(B) provides that a child who is claimed as a qualifying child by parents who do not file a joint return together is the qualifying child of the parent with whom the child resided for a longer period of time during the taxable year or, if the child resided with both parents for an equal period of time, of the parent with the higher adjusted gross income. However, a child is treated as the qualifying child or qualifying relative of the noncustodial parent if the custodial parent releases the claim to the exemption under section 152(e) and this section.

(b) *Release of claim by custodial parent*—(1) *In general.* Under section 152(e)(1), notwithstanding section 152(c)(1)(B), (c)(4)(B), and (d)(1)(C), a child is treated as the qualifying child or qualifying relative of the noncustodial parent (as defined in paragraph (c) of this section) if the requirements of paragraphs (b)(2) and (b)(3) of this section are met.

(2) *Support, custody, and parental status.* The requirements of this paragraph (b)(2) are met if the parents of the child provide over one-half of the child's support for the calendar year, the child is in the custody of one or both parents for more than one-half of the calendar year, and the parents—

(i) Are divorced or legally separated under a decree of divorce or separate maintenance;

(ii) Are separated under a written separation agreement; or

(iii) Live apart at all times during the last 6 months of the calendar year whether or not they are or were married.

(3) *Release of claim to child.* The requirements of this paragraph (b)(3) are met if—

(i) The custodial parent signs a written declaration that the custodial parent will not claim the child as a dependent for the taxable year beginning in that calendar year and the noncustodial parent attaches the declaration to the noncustodial parent's return for the taxable year; or

(ii) A qualified pre-1985 instrument, as defined in section 152(e)(3)(B), effective for the taxable year beginning in that calendar year, provides that the noncustodial parent is entitled to the dependency exemption for the child and the noncustodial parent provides at least $600 for the support of the child during the calendar year.

(c) *Custodial parent*—(1) *In general.* The *custodial parent* is the parent with whom the child resides for a greater number of nights during the calendar year, and the *noncustodial parent* is the parent who is not the custodial parent.

(2) *Absences.* For purposes of this paragraph (c), when a child resides with neither parent for a night, the child is treated as residing with the parent with whom the child would have resided for the night but for the absence. However, if the child would have resided with neither parent for a night during an absence (for example, because a court awarded custody of the child to a third party for the period of absence), the

child is treated as residing with neither parent for the night of the absence.

(3) *Special rule for equal number of nights.* If a child is in the custody of one or both parents for more than one-half of the calendar year and the child resides with each parent for an equal number of nights during the calendar year, the parent with the higher adjusted gross income for the calendar year is treated as the custodial parent.

(d) *Written declaration*—(1) *Form of declaration*—(i) *In general.* The written declaration under paragraph (b)(3)(i) of this section must constitute the custodial parent's unconditional release of the parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is unconditional if it does not expressly condition the custodial parent's release of the right to claim the child as a dependent on the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that does not specify a year or years has no effect. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years. A court order or decree may not serve as the written declaration.

(ii) *Form designated by IRS.* A written declaration may be made on a form designated by the IRS (currently Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents). A written declaration not on the form designated by the IRS must conform to the substance of that form.

(2) *Attachment to return.* A noncustodial parent must attach the original written declaration to the parent's return for the taxable year in which the child is claimed as a dependent. If a release of a claim to a child is for more than one year, the noncustodial parent must attach the original written declaration to the parent's return for the first taxable year for which the release is effective. The noncustodial parent must attach a copy of the written declaration to the parent's return for each subsequent taxable year for which the noncustodial parent claims the child as a dependent.

(3) *Revocation of written declaration*—(i) *In general.* A written declaration described in paragraph (d)(1) of this section may be revoked by providing written notice of the revocation to the other parent. The revocation may be effective no earlier than the taxable year that begins in the first calendar year after the calendar year in which the parent revoking the written declaration provides the written notice.

(ii) *Form of revocation.* The revocation may be made on a form designated by the IRS whether or not the written declaration was made on a form designated by the IRS. A revocation not on that form must conform to the substance of the form. The revocation must specify the year or years for which the revocation is effective. A revocation that does not specify a year or years has no effect. A revocation that specifies all future years is treated as specifying the first taxable year after the taxable year the revocation is executed and all subsequent taxable years.

(iii) *Attachment to return.* The custodial parent must attach the original revocation to the parent's return for the taxable year for which the custodial parent claims a child as a dependent. If a revocation is for more than one year, the custodial parent must attach the original revocation to the parent's return for the first taxable year for which the revocation is effective and a copy of the revocation to the parent's return for each subsequent taxable year for which the custodial parent claims the child as a dependent. The custodial parent must keep a copy of the revocation and evidence of delivery of written notice of the revocation to the noncustodial parent.

(e) *Coordination with other sections.* A child who is treated as the qualifying child or qualifying relative of the noncustodial parent under section 152(e) and this section is treated as a dependent of both parents for purposes of sections 105(b), 132(h)(2)(B), and 213(d)(5).

(f) *Examples.* The provisions of this section are illustrated by the following examples which assume that each taxpayer's taxable year is the calendar year, one or both of the child's parents provide over one-half of the child's support for the calendar year, the child is in the custody of one or both parents for more than one-half of the calendar year, and the child otherwise meets the requirements of a qualifying child under section 152(c). In addition, in each of the examples, there is no qualified pre-1985 instrument in effect. The examples are as follows:

Example 1. (i) B and C, the parents of Child, are divorced. In 2007, Child resides with B for 7 months and with C for 5 months. B signs a Form 8332 for 2007 allowing C to claim Child as a dependent for that year.

(ii) Under paragraph (c) of this section, B is the custodial parent of Child in 2007 because B is the parent with whom Child resides for the greater number of nights in 2007. Because B signs a Form 8332, under paragraph (b) of this section, Child is treated as the qualifying child of C if C attaches the Form 8332 to C's 2007 return.

Example 2. (i) D and E, the parents of Child, are divorced. In 2007, Child resides with D for 7 months and with E for 5 months. D, the custodial parent, does not execute a Form 8332 or similar declaration for 2007.

(ii) Because D does not execute a Form 8332 or similar declaration for 2007, section 152(e) and this section do not apply to determine whether Child is treated as the qualifying child of D or E. Instead, whether Child is the qualifying child of D or E is determined under section 152(c).

Example 3. F and G, who never married, are the parents of Child. In 2007, Child spends alternate weeks residing with F and G. During a week when Child is residing with F, F gives Child permission to spend a night at the home of a friend. Under paragraph (c)(2) of this section, the night Child spends at the friend's home is treated as a night in which Child resides with F for purposes of determining whether Child is residing with F or G for the greater number of nights in the calendar year.

Example 4. J and K are the divorced parents of Child. In 2007, Child spends alternate periods residing with J or K. In August of 2007, J and Child spend 10 nights together in a hotel while on vacation. Under paragraph (c) of this section, the 10 nights when J and Child are on vacation are treated as nights in which Child resides with J for purposes of determining whether Child is residing with J or K for the greater number of nights in the calendar year.

Example 5. (i) In 2006, L and M, the parents of Child, execute a written separation agreement. The agreement provides that Child will live with L and that M will make monthly child support payments to L. The agreement further provides that L will not claim Child as a dependent in 2007 and in subsequent alternate years. The agreement does not expressly condition L's agreement not to claim Child as a dependent on M's payment of child support or any other condition. The agreement contains all the other information requested on Form 8332. M attaches the agreement to M's tax returns for 2007 and 2009.

(ii) In 2008, M fails to provide child support for Child, and L signs a Form 8332 revoking the release of L's right to claim Child as a dependent for 2009 and delivers a copy of the Form 8332 to M. L attaches the Form 8332 revoking the release to L's tax return for 2009 and keeps a copy of the revocation and evidence of delivery of written notice to M.

(iii) M may claim Child as a qualifying child for 2007 because L releases the right to claim Child as a dependent under paragraph (b)(3) of this section by executing the separation agreement, and M attaches the separation agreement to M's tax return in accordance with paragraphs (d)(1) and (d)(2) of this section. The separation agreement qualifies as a written declaration under paragraph (d)(1) of this section because L's agreement not to claim Child as a dependent

is not conditioned on M's payment of support or meeting of any other obligation, and the agreement otherwise conforms to the substance of Form 8332. For 2009, only L may claim Child as a qualifying child because in 2008 L revokes the release of the claim in accordance with paragraph (d)(3) of this section, and the revocation takes effect in 2009, the taxable year that begins in the first calendar year after L provides written notice of the revocation to M.

Example 6. The facts are the same as *Example 5*, except that the agreement expressly states that L agrees not to claim Child as a dependent only if M is current in the payment of support for Child at the end of the calendar year. The separation agreement does not qualify as a written declaration under paragraph (d)(1) of this section because L's agreement not to claim Child as a dependent is conditioned on M's payment of support. Therefore, M may not claim Child as a qualifying child in 2007 or 2009.

Example 7. (i) N and P are the divorced parents of Child. Child resides with N for ten months and with P for two months in each year 2007 through 2009. In 2007, N provides a written statement to P that provides that N will not claim Child as a dependent but does not specify a year or years. P attaches the statement to P's returns for 2007 through 2009.

(ii) Because the written statement provided by N does not specify the year or years for which P may claim Child as a qualifying child, under paragraph (d)(1) of this section, the written statement is not a written declaration that conforms to the substance of Form 8332. Therefore, P may not claim Child as a qualifying child in 2007 through 2009.

Example 8. (i) R and S are the divorced parents of Child. Child resides solely with R. The divorce decree requires S to pay child support to R and requires R to execute a Form 8332 to release the right to claim Child as a qualifying child to S. R fails to sign a Form 8332 for 2007, and S attaches an unsigned Form 8332 to S's return for 2007.

(ii) Child is the qualifying child of R for 2007. The order in the divorce decree requiring R to execute a Form 8332 is ineffective to allocate the right to claim Child as a qualifying child to S. Furthermore, under paragraph (d)(1) of this section, the unsigned Form 8332 does not conform to the substance of Form 8332. Therefore, S may not claim Child as a qualifying child in 2007.

(iii) If, however, R executes a Form 8332 for 2007 and S attaches the Form 8332 to S's return, then S may claim Child as a qualifying child for 2007 under paragraph (d)(1) of this section.

(g) *Effective date.* This section applies to taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E7–8378 Filed 5–1–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–07–014]

RIN 1625–AA00

Safety Zone; Baileys Harbor Fireworks, Baileys Harbor, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on Baileys Harbor. This zone is intended to restrict vessels from a portion of Baileys Harbor during the Baileys Harbor July 5, 2007 fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before May 17, 2007.

ADDRESSES: You may mail comments and related material to Commander, Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207. The Sector Lake Michigan Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Sector Lake Michigan Prevention Department between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–07–014], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Sector Lake Michigan Prevention Department at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

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

The comment period for this rule has been abbreviated to 15 days in order to provide a full 30 day notice period after publication before the rule becomes effective.

Discussion of Proposed Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the Baileys Harbor fireworks display. The fireworks display will occur between 9 p.m. (local) and 11 p.m. (local) on July 5, 2007.

The safety zone for the fireworks will encompass all waters of Lake Michigan, Baileys Harbor, within the arc of a circle with a 600-foot radius from the fireworks launch site located in position 45[deg]04'03'' N, 087[deg]06'08'' W (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated on-scene representative. The Captain of the

Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard will only use this safety zone for two hours on the date specified. This safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

Small Entities

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

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

This proposed rule would affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Baileys Harbor on Lake Michigan off Baileys Harbor, WI, between 9 p.m. (local) and 11 p.m. (local) on July 5, 2007. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 2 hours. Vessel traffic can safely pass around the safety zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. This proposed rule establishes a regulated navigation area and as such is covered by this paragraph.

A preliminary ''Environmental Analysis Check List'' and ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–014 to read as follows:

§ 165.T09–014 Safety zone; Baileys Harbor Fireworks, Baileys Harbor, WI.

(a) *Location*. The following area is a temporary safety zone: all waters of Lake Michigan, Baileys Harbor, within the arc of a circle with a 600-foot radius from the fireworks launch site located in position 45[deg]04'03'' N, 087[deg]06'08'' W (NAD 83).

(b) *Effective period*. This regulation is effective from 9 p.m. to 11 p.m. on July 5, 2007.

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

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

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: April 17, 2007.

Bruce C. Jones,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. E7–8445 Filed 5–1–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0036; FRL–8120–3]

Chloroneb, Cypermethrin, Methidathion, Nitrapyrin, Oxyfluorfen, Pirimiphos-methyl, Sulfosate, Tebuthiuron, Thiabendazole, Thidiazuron, and Tribuphos; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain tolerances for the fungicides chloroneb and thiabendazole; the herbicide sulfosate; the defoliant thidiazuron; the insecticides cypermethrin, methidathion, and pirimiphos-methyl; and the soil microbiocide nitrapyrin. Also, EPA is proposing to modify certain tolerances for the fungicides chloroneb and thiabendazole; the herbicides oxyfluorfen and tebuthiuron; the defoliants thidiazuron and tribuphos; the insecticides cypermethrin, methidathion, and pirimiphos-methyl; and the soil microbiocide nitrapyrin. In addition, EPA is proposing to establish new tolerances for the fungicides chloroneb and thiabendazole; the herbicide oxyfluorfen; the defoliants thidiazuron and tribuphos; the insecticides cypermethrin, methidathion, and pirimiphos-methyl; and the soil microbiocide nitrapyrin. The regulatory actions proposed in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q).

DATES: Comments must be received on or before July 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0036, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0036. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-

mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@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:

<bullet≤ Crop production (NAICS code 111).

<bullet≤ Animal production (NAICS code 112).

<bullet≤ Food manufacturing (NAICS code 311).

<bullet≤ 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. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. 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.

C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke, remove, modify, and establish specific tolerances for residues of the fungicides chloroneb and thiabendazole; the herbicides oxyfluorfen, sulfosate, and tebuthiuron; the defoliants thidiazuron and tribuphos; the insecticides cypermethrin, methidathion, and pirimiphos-methyl; and the soil microbiocide nitrapyrin in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance

reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FFDCA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1 (800) 490–9198; fax 1 (513) 489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1 (800) 553–6847 or (703) 605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet for chloroneb, cypermethrin, nitrapyrin, oxyfluorfen, tebuthiuron, and thidiazuron in public dockets EPA–HQ–OPP–2004–0369, EPA–HQ–OPP–2005–0293, EPA–HQ–OPP–2004–0283, EPA–HQ–OPP–2002–0255, EPA–HQ–OPP–2002–0146, and EPA–HQ–OPP–2004–0382, respectively, at *http://www.regulations.gov/* and for methidathion, pirimiphos-methyl, thiabendazole, and tribuphos at *http://www.epa.gov/pesticides/reregistration/status.htm*. A RED for sulfosate was not needed because it was registered after November 1, 1984 and not subject to reregistration eligibility, and because its tolerances were reassessed at the time of the addition of a tolerance for a new use, as described below in Unit II.A., a TRED document was no longer needed for the purpose of tolerance reassessment.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies, provided that the tolerance is safe. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that:

<bullet≤ Lawful use (sometimes through a label change) may result in a higher residue level on the commodity; and

<bullet≤ The tolerance remains safe, notwithstanding increased residue level allowed under the tolerance.

In REDs, Chapter IV on ''Risk management, Reregistration, and Tolerance reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure. EPA also seeks to harmonize tolerances with international standards set by the Codex Alimentarius Commission, as described in Unit III.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and paper copies for chloroneb, cypermethrin, nitrapyrin, tebuthiuron, and thidiazuron can be found under their respective public docket numbers, identified in Unit II.A. Paper copies for methidathion, oxyfluorfen, pirimiphos-methyl, thiabendazole, and tribuphos are available in the public docket for this rule. Electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov/*. You may search for docket number EPA–HQ–OPP–2007–0036, then click on that docket number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be modified, are safe; i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with FFDCA section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION**.

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person, in comments on the proposal, indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Chloroneb*. Currently, chloroneb tolerances are set forth in 40 CFR 180.257(a) for residues of chloroneb and its metabolite 2,5-dichloro-4-methoxyphenol, calculated as chloroneb. The Agency determined, as described in the Residue Chemistry Chapter document, that residues of concern include the conjugate of 2,5-dichloro-4-methoxyphenol. Therefore, EPA is proposing to revise the tolerance expression to include the conjugated as well as free metabolite in 40 CFR 180.257(a) as follows:

Tolerances are established for residues of the fungicide chloroneb (1,4-dichloro-2,5-dimethoxybenzene) and its metabolite 2,5-dichloro-4-methoxyphenol (free and conjugated), calculated as chloroneb, in or on the following raw agricultural commodities.

Also, in 40 CFR 180.257(a), EPA is proposing to remove the ''(N)'' designation from all entries to conform to current Agency administrative practice, where the ''(N)'' designation means negligible residues.

The tolerance in 40 CFR 180.257(a) for chloroneb residues of concern in or on cotton, forage should be revoked because the Agency no longer considers this commodity to be a significant livestock feed item, and therefore, is no longer needed. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.257(a) on cotton, forage.

Based on available data from beans, undelinted cottonseed, soybeans, sugarbeet roots and sugarbeet tops that showed combined chloroneb residues of

concern at <0.1 ppm, EPA determined that these tolerances should be increased from 0.1 ppm and set at the limit of quantitation (LOQ) of 0.2 ppm. Therefore, the Agency is proposing in 40 CFR 180.257(a) to increase the tolerances to 0.2 ppm for the following: Bean and revise to bean, dry, seed and bean, succulent; beet, sugar, roots; beet, sugar, tops; cotton, undelinted seed; and soybean and revise to soybean, seed. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on the translation of available data from cowpea forage and soybean forage that showed combined chloroneb residues of concern as high as <2.0 ppm, EPA determined that the expected residues on cowpea hay and soybean hay would be <2.0 ppm and tolerances on cowpea hay and soybean hay should be established at 2.0 ppm. Therefore, the Agency is proposing in 40 CFR 180.257(a) to establish tolerances on cowpea, hay and soybean, hay, each at 2.0 ppm.

Based on cotton metabolism data that showed combined chloroneb residues of concern from cottonseed treatment were as high as 0.256 ppm on cotton gin byproducts, EPA determined that a tolerance on cotton gin byproducts should be established at 1.0 ppm. Therefore, the Agency is proposing in 40 CFR 180.257(a) to establish a tolerance on cotton, gin byproducts at 1.0 ppm.

In addition, EPA is proposing to revise commodity terminology in newly recodified 40 CFR 180.257(a) to conform to current Agency practice as follows: ''bean, forage'' to ''cowpea, forage.''

There are no Codex MRLs for chloroneb.

2. *Cypermethrin*. Based on available cattle exaggerated feeding data (0.83x and 2.8x maximum theoretical dietary burden or MTDB) for cypermethrin, EPA calculated that the maximum expected residues in muscle, fat, kidney, liver, whole milk and milk cream at 1x MTDB to be 0.084 ppm, 0.699 ppm, 0.025 ppm, <0.0036 ppm, 0.084 ppm, and 0.378 ppm, respectively. Therefore, the Agency determined that tolerances for the meat of cattle, goats, horses and sheep should be increased from 0.05 to 0.2 ppm in order to harmonize with Codex, and tolerances for the fat of cattle, goats, horses, and sheep should be increased from 0.05 to 1.0 ppm. In addition, the Agency determined that the tolerance level in 40 CFR 180.418(a)(2) for zeta-cypermethrin on milk fat (reflecting 0.10 in whole milk) at 2.5 ppm (based on a slightly higher theoretical dietary burden for cattle than cypermethrin) is also appropriate for cypermethrin and therefore the tolerance on milk should be revised to milk fat and increased from 0.05 to 2.5 ppm. Consequently, EPA is proposing to increase the tolerances in 40 CFR 180.418(a)(1) on cattle, meat; goat, meat; horse, meat; and sheep, meat to 0.2 ppm; cattle, fat; goat, fat; horse, fat; and sheep, fat to 1.0 ppm; and milk to 2.5 ppm and revise the commodity terminology to milk, fat (reflecting 0.10 in whole milk). The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available cattle exaggerated feeding data and a 10-fold lower MTDB of cypermethrin for swine in comparison with cattle, EPA calculated that the maximum expected residues in muscle, fat, kidney, and liver of swine at 1x MTDB to be 0.0084 ppm, 0.0699 ppm, 0.0025 ppm, and <0.00036 ppm, respectively. Therefore, the tolerances on hog fat should be increased from 0.05 to 0.1 ppm in 40 CFR 180.418(a)(1) and decreased from 1.0 to 0.1 ppm in 40 CFR 180.418(a)(2). Consequently, EPA is proposing to increase the tolerance in 40 CFR 180.418(a)(1) on hog, fat to 0.1 ppm and decrease the tolerance on hog, fat in 40 CFR 180.418(a)(2) to 0.1 ppm. Also, while the Agency determined that the tolerance on hog meat is adequate at 0.05 ppm in 40 CFR 180.418(a)(1), it believes that it should be decreased from 0.2 to 0.05 ppm in 40 CFR 180.418(a)(2). Consequently, EPA is proposing to decrease the tolerance on hog, meat in 40 CFR 180.418(a)(2) to 0.05 ppm. In addition, because the Agency expects cypermethrin residues on kidney and liver to be below the livestock method LOQ of 0.05 ppm, it believes that there is no reasonable expectation of detecting finite residues of cypermethrin or zeta-cypermethrin residues in or on hog, meat byproducts and therefore the tolerances are no longer needed under 40 CFR 180.6(a)(3). Consequently, the Agency is proposing to revoke the tolerances on hog, meat byproducts in both 40 CFR 180.418(a)(1) and (a)(2). The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available poultry exaggerated feeding data (14.3x MTDB) of cypermethrin, EPA calculated that the maximum expected residues in kidney, liver, and muscle of poultry at 1x MTDB is each at <0.0007 ppm, which is below the livestock method LOQ of 0.05 ppm and LOD of 0.01 ppm, 0.02 ppm in poultry fat, and 0.0086 ppm in egg. Therefore, EPA determined that there is no reasonable expectation of detecting finite residues of cypermethrin in poultry meat or meat byproducts and the poultry meat byproducts tolerance in 180.418(a)(2) is no longer needed under 40 CFR 180.6(a)(3). However, the Agency believes that tolerances of 0.05 ppm should be established on egg, poultry fat, and poultry meat in order to harmonize with Codex. Consequently, the Agency is proposing to revoke the tolerances in 40 CFR 180.418(a)(2) on poultry, meat byproducts and establish tolerances in 40 CFR 180.418(a)(1) on egg; poultry, fat; and poultry, meat at 0.05 ppm.

Based on available field trial data that showed cypermethrin residues as high as 3.4 ppm in or on head lettuce, EPA determined that the tolerance should be decreased from 10.0 to 4.0 ppm. Also, since the use of zeta-cypermethrin on head lettuce is covered by the tolerance on leafy vegetables except Brassica, the Agency has determined that the tolerance on head lettuce is no longer needed in 40 CFR 180.418(a)(2). Therefore, the Agency is proposing in 40 CFR 180.418(a)(1) to decrease the tolerance on lettuce, head to 4.0 ppm and revoke the tolerance on lettuce, head in 40 CFR 180.418(a)(2).

Based on data that showed cypermethrin residues as high as 8.84 ppm in or on cotton gin byproducts, EPA determined that a tolerance on cotton gin byproducts should be established at 11.0 ppm. Therefore, the Agency is proposing in 40 CFR 180.418(a)(1) to establish a tolerance on cotton, gin byproducts at 11.0 ppm.

Because the tolerance expired on June 30, 2005, EPA is proposing to remove the entry for the time-limited tolerance on mustard seed from 40 CFR 180.418(b).

In addition, EPA is proposing to revise commodity terminology to conform to current Agency practice as follows: in 40 CFR 180.418(a)(1), ''onion, dry bulb'' to ''onion, bulb;'' and in 40 CFR 180.418(a)(2), ''dried, shelled pea and bean, except soybean (Crop subgroup 6C)'' to ''pea and bean, dried shelled, except soybean, subgroup 6C;'' ''edible podded legume vegetables (Crop subgroup 6A)'' to ''vegetable, legume, edible podded, subgroup 6A;'' ''leafy vegetables except Brassica'' to ''vegetable, leafy, except brassica, group 4;'' ''onion, dry bulb'' to ''onion, bulb;'' ''sorghum, forage'' to ''sorghum, grain, forage;'' ''sorghum, grain'' to ''sorghum, grain, grain;'' ''succulent, shelled pea and bean (Crop subgroup 6B)'' to ''pea

and bean, succulent shelled, subgroup 6B;'' and ''vegetable, fruiting, except cucurbits (Crop group 8)'' to ''vegetable, fruiting, group 8.'' Because there is an existing tolerance on grass forage, in this case via a group tolerance, there is no need to include sorghum, forage, forage in the revision of the commodity terminology for sorghum forage.

In the **Federal Register** of December 13, 2006 (71 FR 74802) (FRL–8064–3), EPA published a direct final rule which finalized certain pesticide tolerance nomenclature changes. In both 40 CFR 180.418(a)(1) and (a)(2), the changes from ''Brassica leafy'' to ''Vegetable, brassica, leafy group 5'' were not correct because there are existing tolerances for subgroup 5A and therefore the terminology ''Brassica, leafy'' should have been changed so as to denote subgroup 5B. Therefore, EPA is proposing to revise ''Vegetable, brassica, leafy group 5'' (formerly ''Brassica, leafy'') to ''Brassica, leafy greens, subgroup 5B'' in both 40 CFR 180.418(a)(1) and (2).

The proposed tolerance actions herein for cypermethrin and zeta-cypermethrin, to implement the recommendations of the cypermethrin RED, reflect use patterns in the U.S. which support a different tolerance than the Codex value on Brassica vegetables, cottonseed, head lettuce, and milk because of differences in good agricultural practices and determination of secondary residue levels in livestock commodities. However, compatibility exists for bulb onions and meat byproducts, and will exist between the proposed reassessed U.S. tolerances and Codex MRLs for cypermethrin residues in or on egg, poultry meat; and meat of cattle, goats, horses, and sheep.

3. *Methidathion*. Because residues of methidathion in or on pecans and walnut at 0.05 ppm and peach at 0.05 ppm are covered by the existing group tolerance on nut (0.05 ppm) and stone fruit (0.05 ppm), respectively, EPA determined that these individual tolerances are no longer needed, and therefore should be revoked. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.298(a) on peach, pecan, and walnut.

Based on available data that showed residues of methidathion as high as 3.6 ppm in or on oranges, EPA determined that the tolerance on citrus fruit (except mandarins) should be increased from 2.0 to 4.0 ppm. Therefore, the Agency is proposing in 40 CFR 180.298(a) to revise the tolerance on fruit, citrus (except mandarins) to fruit, citrus, group 10, except tangerine and increase the tolerance to 4.0 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Also, based on available data that showed residues of methidathion concentrate an average of 118x in oil processed from methidathion-treated oranges, EPA determined that a tolerance on citrus oil should be established at 420.0 ppm. Therefore, the Agency is proposing in 40 CFR 180.298(a) to establish a tolerance on citrus, oil at 420.0 ppm.

The methidathion IRED recommended both recodifying the tolerances for alfalfa, alfalfa hay, grass, and grass hay (revising grass and grass hay to timothy and timothy hay) from 40 CFR 180.298(a) into (c) as regional tolerances and decreasing them from 12.0 to 5.0 ppm because section 24(c) FIFRA registrations had existed which allowed application to alfalfa and grass intended for haying, green chopping or grazing to be fed to livestock provided that the registrations were revised to impose a 21–day pre-harvest interval (PHI) and limited the amount of active ingredient per acre to timothy or timothy/alfalfa stands to 1 pound per cutting. From available data that showed residues of methidathion ranged from 0.13 to 25.0 ppm up to 12 days post-application and field trial data which demonstrated that residues of methidathion decline rapidly with time, EPA calculated that residues would be <5.0 ppm with a 21–day PHI. However, while currently existing section 24(c) FIFRA registrations for use of methidathion on timothy and timothy hay have a 21–day PHI, a rate up to 1 lb. per acre per cutting, and a restriction against the grazing or harvesting of treated timothy and timothy hay for feeding to any animal that may enter the human food chain, one registration in Idaho that expires on December 31, 2007 does not specify a restriction against treated hay, seed, or seed screenings from entering the human food chain (unlike the other registrations). Therefore, the Agency believes that the grass and grass hay tolerances would no longer be needed shortly after December 31, 2007; i.e., after the Idaho registration expires. Consequently, EPA is proposing to recodify the tolerances on grass and grass, hay from 40 CFR 180.298(a) to (c), revise their commodity terminology to timothy, forage and timothy, hay, respectively, decrease the tolerances from 12.0 to 5.0 ppm, and revoke them with an expiration/revocation date of March 31, 2008.

In addition, section 24(c) FIFRA registrations exist for methidathion use on alfalfa grown for seed production, a non-food/non-feed use (that include restrictions against grazing/feeding on alfalfa, including seed, seed screenings and hay for human consumption or animal feed). However, while one of those registrations (for use on alfalfa with a 21–day PHI and rate up to 1 lb. per acre per cutting in Idaho that expires on December 31, 2007) has a restriction against the grazing or harvesting of treated alfalfa for feeding to any animal that may enter the human food chain, it does not specify a restriction against treated hay, seed, or seed screenings from entering the human food chain. Therefore, the Agency believes that the alfalfa and alfalfa hay tolerances would no longer be needed shortly after December 31, 2007. Consequently, EPA is proposing to recodify the tolerances on alfalfa and alfalfa, hay from 40 CFR 180.298(a) to (c), decrease them to 5.0 ppm, revoke them with an expiration/revocation date of March 31, 2008, and revise the commodity terminology for alfalfa to alfalfa, forage.

Also, EPA is proposing to revise commodity terminology in 40 CFR 180.298(a) to conform to current Agency practice as follows: ''fruit, pome'' to ''fruit, pome, group 11;'' ''fruit, stone'' to ''fruit, stone, group 12;'' ''nut'' to ''nut, tree, group 14;'' and ''sorghum, forage'' to ''sorghum, grain, forage'' and ''sorghum, forage, forage;'' ''sorghum, grain'' to ''sorghum, grain, grain.''

The proposed tolerance actions herein for methidathion, to implement the recommendations of the methidathion RED, reflect use patterns in the U.S. which support a different tolerance than the Codex value on citrus fruits (except tangerines), as well as tolerances on pome fruit, stone fruit, tangerines (mandarins), and safflower seeds, which are to be maintained at their existing levels. However, compatibility with Codex MRLs exists for U.S. tolerances on globe artichokes, grain sorghum, pecans, sunflower seeds, and walnuts.

4. *Nitrapyrin*. Based on ruminant and poultry data feeding the maximum theoretical dietary burden of 6-chloropicolinic acid, EPA determined that there is no reasonable expectation of finite residues of nitrapyrin's metabolite 6-chloropicolinic acid, free or conjugated, in any livestock or poultry commodities. (Because 6-chloropicolinic acid is the only residue expected in crops treated with nitrapyrin, it was appropriate to feed 6-chloropicolinic acid instead of nitrapyrin). Therefore, tolerances on the fat, meat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry are no longer needed under 40 CFR

180.6(a)(3). Consequently, the Agency is proposing to revoke the tolerances in 40 CFR 180.350 for the combined residues of nitrapyrin and 6-chloropicolinic acid in or on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; sheep, fat; sheep, meat; and sheep, meat byproducts; poultry, fat; poultry, meat; and poultry, meat byproducts.

Based on available data showing combined nitrapyrin and 6-chloropicolinic acid residues as high as 0.315 ppm on sorghum forage, EPA determined that the tolerance for sorghum forage should be increased from 0.1 to 0.5 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.350(a) on sorghum, forage to 0.5 ppm and revise it to ''sorghum, forage, forage'' and ''sorghum, grain, forage.'' The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data showing combined nitrapyrin and 6-chloropicolinic acid residues as high as 0.35 ppm on wheat grain, 1.436 ppm on wheat forage, and 4.8 ppm on wheat straw, EPA determined that the tolerances for wheat grain, forage, and straw should be increased from 0.1 to 0.5 ppm, 0.5 to 2.0 ppm and 0.5 to 6.0 ppm, respectively. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.350(a) on wheat, grain to 0.5 ppm, wheat, forage to 2.0 ppm, and wheat, straw to 6.0 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on field trial data that supported an increased tolerance for wheat grain from 0.1 to 0.5 ppm and processing data that showed concentration of 6-chloropicolinic acid in wheat bran by 5.5x and wheat shorts by 2.2x, but not in flour (nitrapyrin was not detectable in any processed wheat product), EPA determined that tolerances should be established for wheat bran at 3.0 ppm and wheat milled byproducts, except flour at 2.0 ppm. Therefore, the Agency is proposing to establish tolerances in 40 CFR 180.350(a) for combined residues of nitrapyrin and its metabolite 6-chloropicolinic acid in or on wheat, bran at 3.0 ppm, and wheat, milled byproducts, except flour at 2.0 ppm.

Based on field trial data that supported a tolerance of 0.1 ppm for corn grain and processing data that showed concentration of 6-chloropicolinic acid in field corn screenings and grits after both dry and wet milling by 1.4x and 1.45x, respectively, but not in sweet corn fractions processed from sweet corn, EPA determined that a tolerance should be established for field corn milled byproducts at 0.2 ppm. Therefore, the Agency is proposing to establish a tolerance in 40 CFR 180.350(a) for combined residues of nitrapyrin and its metabolite 6-chloropicolinic acid in or on corn, field, milled byproducts at 0.2 ppm.

Also, in 40 CFR 180.350(a), EPA is proposing to remove the ''(N)'' designation from all entries to conform to current Agency administrative practice, where the ''(N)'' designation means negligible residues.

In addition, in 40 CFR 180.350(a), EPA is proposing to revise the commodity terminology for ''corn, forage'' to ''corn, field, forage'' and ''corn, sweet, forage;'' ''corn, grain'' to ''corn, field, grain'' and ''corn, pop, grain;'' ''corn, stover'' to ''corn, field, stover,'' ''corn, pop, stover,'' and ''corn, sweet, stover;'' and ''sorghum, grain'' to ''sorghum, grain, grain.''

There are no Codex MRLs for nitrapyrin.

5. *Oxyfluorfen*. Based on available data that showed residues of oxyfluorfen as high as 0.03 ppm in or on mint hay, EPA determined that the tolerance on mint hay (peppermint and spearmint) should be decreased from 0.1 to 0.05 ppm. Therefore, the Agency is proposing in 40 CFR 180.381(a) to revise the commodity terminology for mint hay into separate tolerances on peppermint, tops and spearmint, tops and decrease each tolerance to 0.05 ppm.

Based on available exaggerated (5x to 7x MTDB) cattle feeding data that showed residues of oxyfluorfen as high as <0.003 ppm in milk, 0.007 ppm in fat, <0.003 ppm in meat, <0.003 ppm in kidney, and <0.003 ppm in liver, EPA expected residues below the LOQ (0.01 ppm) in milk, fat, meat, and meat byproducts at the 1x MTDB for cattle. The Agency determined that the tolerances on milk and the fat, meat and meat byproducts of cattle, goats, hogs, horses, and sheep should be set at the LOQ and decreased from 0.05 to 0.01 ppm. Therefore, EPA is proposing in 40 CFR 180.381(a) to decrease the tolerances on milk; cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; sheep, fat; sheep, meat; and sheep, meat byproducts to 0.01 ppm.

Based on available exaggerated (2.0x MTDB) poultry feeding data that showed residues of oxyfluorfen as high as 0.024 ppm in eggs, 0.163 ppm in fat, 0.004 ppm in meat, and 0.006 ppm in liver, EPA expected residues of 0.012 ppm in egg, 0.082 ppm in fat, 0.002 ppm in meat, and 0.003 ppm in liver at the 1x MTDB for poultry. The Agency determined that the tolerances should be decreased on egg from 0.05 to 0.03 ppm, meat and meat byproducts from 0.05 to 0.01 ppm, and increased on fat from 0.05 to 0.2 ppm. Therefore, EPA is proposing in 40 CFR 180.381(a) to decrease the tolerances on egg to 0.03 ppm, poultry, meat to 0.01 ppm, poultry, meat byproducts to 0.01 ppm, and increase the tolerance on poultry, fat to 0.2 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data that showed oxyfluorfen residues from use of oxyfluorfen on grass grown for seed in Oregon and Washington were not detectable (<0.03 ppm) in or on grass forage, hay, and seed screenings, EPA determined that the reassessed animal commodity tolerances are adequate to cover any residue contribution from regional registration uses of oxyfluorfen on grasses grown for seed and tolerances should be established on grass forage, hay, and seed screenings at 0.05 ppm. Therefore, the Agency is proposing to establish tolerances in 40 CFR 180.381(c) on grass, forage; grass, hay; and grass, seed screenings; each at 0.05 ppm.

In addition, EPA is proposing to revise commodity terminology in 40 CFR 180.381 to conform to current Agency practice as follows: ''banana (including plantain)'' to ''banana;'' ''coffee, bean'' to ''coffee, bean, green;'' ''corn, grain'' to ''corn, field, grain'' and ''corn, pop, grain;'' ''onion, dry bulb'' to ''onion, bulb;'' ''taro, corm and leaves'' to ''taro, corm'' and ''taro, leaves. Moreover, it should be noted that use of oxyfluorfen on plantains is covered by the existing tolerance at 0.05 ppm for banana under 40 CFR 180.1(g), and there is no need to establish a separate tolerance on plantains at 0.05 ppm. Also, because use of oxyfluorfen on garlic is covered by the existing tolerance at 0.05 ppm for onion bulb under 40 CFR 180.1(g), there is no need to establish a separate tolerance on garlic at 0.05 ppm as had been recommended in the RED.

There are no Codex MRLs for oxyfluorfen.

6. *Pirimiphos-methyl*. Currently, pirimiphos-methyl tolerances are established in 40 CFR 180.409 and expressed for the combined residues of the insecticide parent and metabolite O-(2-ethylamino-6-methyl-pyrimidin-4-yl) O,O-dimethyl phosphorothioate and, in free and conjugated form, the metabolites 2-diethylamino-6-methyl-pyrimidin-4-ol, 2-ethylamino-6-methyl-pyrimidin-4-ol, and 2-amino-6-methyl-pyrimidin-4-ol. However, because EPA has determined that the endpoint chosen for dietary risk assessment is cholinesterase inhibition, the non-cholinesterase-inhibiting hydroxypyrimidine metabolites no longer need to be included for the purpose of tolerance regulation. Also, in an effort to harmonize with Codex, the Agency determined that the residue to be regulated in commodities is pirimiphos-methyl per se. Therefore, EPA is proposing in 40 CFR 180.409(a) to revise the tolerance expression to residues of pirimiphos-methyl per se as follows:

Tolerances are established for residues of the insecticide pirimiphos-methyl (O-(2-diethylamino-6-methyl-4-pyrimidinyl) O,O-dimethyl phosphorothioate) in or on the following raw agricultural commodities.

Based on available exaggerated (4x to 40x MTDB) cattle feeding data from which EPA determined that detectable residues are not reasonably expected in meat, and residues calculated at 1x MTDB would be expected at 0.01 ppm in fat, and <0.01 ppm in both kidney and liver, the Agency determined that tolerances should be decreased and set at the LOQ of 0.02 ppm for residues in the fat and meat byproducts of ruminants and fat in poultry. Because the tolerances on kidney and liver of cattle, goats, hogs, horses, and sheep should be decreased from 2.0 to 0.02 ppm and tolerances on meat byproducts of cattle, goats, hogs, horses, and sheep should be decreased from 0.2 to 0.02 ppm, residues in or on liver and kidney will be covered by the reassessed tolerances on meat byproducts and separate tolerances on kidney and liver are no longer needed and should be revoked. Therefore, EPA is proposing in 40 CFR 180.409(a) to revoke the separate tolerances on cattle, kidney; cattle, liver; goat, kidney; goat, liver; hog, kidney; hog, liver; horse, kidney; horse, liver; sheep, kidney; and sheep, liver; and decrease the tolerances on cattle, fat; cattle, meat byproducts; goat, fat; goat, meat byproducts; hog, fat; hog, meat byproducts; horse, fat; horse, meat byproducts; poultry, fat; sheep, fat; and sheep, meat byproducts to 0.02 ppm.

Based on the cattle feeding data, with current registrations, the tolerance for cattle meat can be classified under 40 CFR 180.6(a)(3); i.e. there is no reasonable expectation of finite residues, and therefore was recommended by the Agency in the pirimiphos-methyl RED to be revoked. In the **Federal Register** of July 31, 2002 (67 FR 49606) (FRL–7191–4), EPA published a rule which finalized certain tolerance actions for a number of pesticide active ingredients, including pirimiphos-methyl. In a response to a comment from Schering-Plough Animal Health Corporation on cattle tolerances and pending registration of a pour-on product, the Agency announced that it would not take action on revoking the tolerance for cattle meat at that time. However, since then, the pending registration application for a pour-on product formulation was withdrawn by Schering-Plough Animal Health Corporation. Currently, there are still active ear tag registrations. The Agency has determined that the use of impregnated materials (ear tags) on non-lactating dairy cattle and beef cattle does not contribute to significant secondary residues in livestock (calculated contribution is a dietary equivalent to <0.01 ppm, which is less than the dietary LOQ of 0.02 ppm). Therefore, under 40 CFR 180.6(a)(3), EPA is proposing to revoke the tolerance in 40 CFR 180.409 on cattle, meat.

While there is a Codex MRL for pirimiphos-methyl on meat at 0.01 mg/kg, EPA notes that the definition of ''meat'' under Codex is different than in U.S. tolerances and Codex has not established pirimiphos-methyl MRLs for fat or meat byproducts.

Based on available processing data that showed residues of pirimiphos-methyl with an average concentration factor of 3.8x in aspirated grain fractions of corn and a highest average field trial (HAFT) of 4.87 ppm in or on corn grain, EPA determined that a tolerance should be established at 20.0 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.409(a) on grain, aspirated fractions at 20.0 ppm.

In addition, EPA is proposing to revise commodity terminology in 40 CFR 180.409 to conform to current Agency practice as follows: ''corn'' to ''corn, field, grain'' and ''corn, pop, grain.''

7. *Sulfosate*. Because sulfosate was registered after November 1, 1984, it was not subject to eligibility for reregistration under FIFRA and therefore a RED was not needed. Existing tolerances were reassessed according to the FQPA standard when new tolerances were established on September 11, 1998 (63 FR 48597)(FRL–6026–6) and therefore a TRED was not needed. However, the last U.S. registrations for the herbicide sulfosate (sulfonium, trimethyl-salt with N-(phosphonomethyl)glycine (1:1)) were canceled on October 15, 2004, due to non-payment of registration maintenance fees, and a notice was published in the **Federal Register** on October 27, 2004 (69 FR 62666)(FRL–7683–7). Therefore, the tolerances are no longer needed. In the **Federal Register** notice of October 27, 2004 (69 FR 62666), EPA stated that cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2005. However, during follow-up communication, the registrant informed the Agency that it did not produce sulfosate after 2002 and sold the remaining existing stocks of sulfosate in 2003. Nor is the registrant supporting the import tolerance on banana. Therefore, the Agency believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade.

Consequently, EPA is proposing to revoke tolerances in 40 CFR 180.489 on the following: Almond, hulls (of which no more than 0.30 ppm is trimethylsulfonium (TMS)); banana (imported only); cattle, fat; cattle, kidney; cattle, meat byproducts, except kidney; cattle, meat; corn, field, forage; corn, field and pop, grain (of which no more than 0.10 ppm is TMS); corn, field and pop, stover (of which no more than 0.20 ppm is TMS); corn, sweet, forage (of which no more than 5.0 ppm is TMS); corn, sweet, kernel plus cob with husks removed (of which no more than 0.10 ppm is TMS); corn, sweet, stover (of which no more than 65 ppm is TMS); cotton, gin byproducts (of which no more than 35 ppm is TMS); cotton, undelinted seed (of which no more than 10 ppm is TMS); crop group 2: Leaves of root and tuber vegetables (human food or animal feed (except radish) group (of which no more than 0.20 ppm is TMS); crop group 8: Vegetable, fruiting (except cucurbits) group; crop subgroup 1-A: Root vegetables (except radish) subgroup (of which no more than 0.10 ppm is TMS); crop subgroup 1-C: Tuberous and corm vegetables subgroup (of which no more than 0.50 ppm is TMS); crop subgroup 6-A: Edible-podded legume vegetables subgroup (of which no more than 0.3 ppm is TMS); crop subgroup 6-B: Succulent shelled pea and bean subgroup (of which no more than 0.1 ppm is TMS); crop subgroup 6C: Dried shelled pea and bean (except soybean and animal feed) subgroup (of which no

more than 1.5 ppm is TMS); egg; fruit, citrus, group 10; fruit, pome, group 11; fruit, stone, group 12; goat, fat; goat, kidney; goat, meat byproducts, except kidney; goat, meat; grain, aspirated fractions (of which no more than 720 ppm is TMS); grape; grape, raisin (of which no more than 0.05 ppm is TMS); hog, fat; hog, kidney; hog, meat byproducts, except kidney; hog, meat; horse, fat; horse, kidney; horse, meat byproducts, except kidney; horse, meat; milk; nut, tree, group 14; pistachio; poultry, fat; poultry, meat byproducts; poultry, meat; prune (of which no more than 0.05 ppm is TMS); radish, roots (of which no more than 15 ppm is TMS); radish, tops (of which no more than 8.0 ppm is TMS); sheep, fat; sheep, kidney; sheep, meat byproducts, except kidney; sheep, meat; sorghum, grain, forage (of which no more than 0.10 ppm is TMS); sorghum, grain, grain (of which no more than 15 ppm is TMS); sorghum, grain, stover (of which no more than 60 ppm is TMS); soybean, forage (of which no more than 1 ppm is TMS); soybean, hay (of which no more than 2 ppm is TMS); soybean, hulls (of which no more than 25 ppm is TMS); soybean, seed (of which no more than 13 ppm is TMS); wheat, bran (of which no more than 6.0 ppm is TMS); wheat, forage (of which no more than 30 ppm is TMS); wheat, grain (of which no more than 2.5 ppm is TMS); wheat, hay (of which no more than 0.50 ppm is TMS); wheat shorts (of which no more than 0.5 ppm is TMS); wheat, shorts (of which no more than 5.0 ppm is TMS); wheat, straw (of which no more than 0.5 ppm is TMS); and wheat, straw (of which no more than 40 ppm is TMS).

8. *Tebuthiuron*. Currently, the tolerance expression in 40 CFR 180.390 regulates for the herbicide tebuthiuron and its metabolites containing the dimethylethyl thiadiazole moiety. Because the Agency has determined that the residues of concern in plants are tebuthiuron and its metabolites *N*–(5-(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea, *N*–(5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, and *N*–(5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea, EPA is proposing to revise the tolerance expression for plant commodities from 40 CFR 180.390 to 180.390(a)(1) with tolerances established for the combined residues of tebuthiuron (*N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea) and its metabolites *N*–(5-(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea, *N*–(5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, and *N*–(5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea.

Also, because the Agency has determined that the residues of concern in fat, meat, kidney, and liver are tebuthiuron and its metabolites *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)urea, 2-dimethylethyl-5-amino-1,3,4-thiadiazole, and *N*–(5-(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea, EPA is proposing to revise the tolerance expression for these animal commodities from 40 CFR 180.390 to 180.390(a)(2) with tolerances established for the combined residues of tebuthiuron (*N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea) and its metabolites *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)urea, 2-dimethylethyl-5-amino-1,3,4-thiadiazole, and *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea.

In addition, because the Agency has determined that the residues of concern in milk are tebuthiuron and its metabolites *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)urea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea, and *N*–(5–(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea, EPA is proposing to revise the tolerance expression for milk from 40 CFR 180.390 to 180.390(a)(3) with a tolerance established for the combined residues of tebuthiuron (*N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea) and its metabolites *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)urea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea, and *N*–(5–(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea.

Based on the MTDB for beef cattle and available exaggerated ruminant feeding data (2.07x), combined tebuthiuron residues of concern in the milk, fat, meat, kidney, and liver of cattle were expected by the Agency at 1x to be as high as 0.57 ppm, 0.39 ppm, 0.67 ppm, 1.66 ppm, and 3.44 ppm, respectively. Therefore, tolerances on the fat and meat of cattle, goats, horses, and sheep should be decreased from 2.0 to 1.0 ppm; tolerances on meat byproducts of cattle, goats, horses, and sheep should be increased from 2.0 to 5.0 ppm; and tolerance on milk should be increased from 0.3 to 0.8 ppm. Consequently, EPA is proposing in 40 CFR 180.390(a)(2) to decrease tolerances on cattle, fat; cattle, meat; goat, fat; goat, meat; horse, fat; horse, meat; sheep, fat; and sheep, meat to 1.0 ppm; and increase tolerances on cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts; and sheep, meat byproducts to 5.0 ppm. Also, EPA is proposing in 40 CFR 180.390(a)(3) to increase the tolerance on milk to 0.8 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Also, EPA is proposing to revise 40 CFR 180.390 by adding separate paragraphs (b), (c), and (d), and reserving those sections for tolerances with section 18 emergency exemptions, regional registrations, and indirect or inadvertent residues, respectively.

There are no Codex MRLs for tebuthiuron.

9. *Thiabendazole*. Currently, thiabendazole tolerances are established in 40 CFR 180.242(a)(1) and expressed for residues of the fungicide thiabendazole (2–(4-thiazolyl)benzimidazole in or on plant commodities. However, EPA has determined that for the purpose of tolerance regulation that its metabolite benzimidazole (free and conjugated) should be included as a residue of concern in or on plant commodities. Therefore, EPA is proposing in 40 CFR 180.242(a)(1) to revise the tolerance expression as follows:

Tolerances are established for the combined residues of the fungicide thiabendazole (2–(4-thiazolyl)benzimidazole) and its metabolite benzimidazole (free and conjugated) in or on the following raw agricultural commodities.

Currently, thiabendazole tolerances are established in 40 CFR 180.242(a)(2) and expressed for combined residues of thiabendazole and its metabolite 5-hydroxythiabendazole in or on animal commodities. However, EPA has determined that for the purpose of tolerance regulation that its metabolites 5-hydroxythiabendazole (free and conjugated) and benzimidazole should be included as residues of concern in animal commodities. Therefore, EPA is proposing in 40 CFR 180.242(a)(2) to revise the tolerance expression as follows:

Tolerances are established for the combined residues of thiabendazole (2–(4-

thiazolyl)benzimidazole) and its metabolites 5-hydroxythiabendazole (free and conjugated) and benzimidazole in or on the following raw agricultural commodities.

Currently, time-limited thiabendazole tolerances for emergency exemptions are established in 40 CFR 180.242(b) and expressed for residues of thiabendazole. However, EPA has determined that for the purpose of tolerance regulation that its metabolite benzimidazole (free and conjugated) should be included as a residue of concern in plant commodities. Therefore, EPA is proposing in 40 CFR 180.242(b) to revise the tolerance expression as follows:

Time-limited tolerances are established for the combined residues of thiabendazole (2–(4-thiazolyl)benzimidazole) and its metabolite benzimidazole (free and conjugated), in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances will expire on the dates specified in the table.

Because thiabendazole residues of concern on postharvest banana pulp will be covered by the tolerance in 40 CFR 180.242(a)(1) on banana, postharvest at 3.0 ppm, a separate tolerance on postharvest banana pulp at 0.4 ppm is no longer needed, and therefore that tolerance on postharvest banana pulp should be revoked. Furthermore, currently, the Agency considers the raw agricultural commodity to be the whole banana and not just the pulp. Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.242(a)(1) for thiabendazole residues of concern in or on banana, pulp, postharvest.

Because there have been no registered uses of thiabendazole for squash since 1993 and rice since 1999, the tolerances on hubbard squash, rice hulls, rice rough, and rice straw are no longer needed. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.242(a)(1) for thiabendazole residues of concern in or on squash, hubbard; rice, hulls; rice, rough; and rice, straw.

Based on available processing data that showed residues of thiabendazole do not concentrate in any regulated processed commodity of potato (granules/flakes, chips, or wet peel) or wheat (bran, flour, middlings, shorts, germ), the Agency determined that the tolerances on processing waste of potato and milled fractions (excluding flour) of wheat are no longer needed. Therefore, EPA is proposing to revoke tolerances in 40 CFR 180.242(a)(1) on potato, processing waste (pre- & post-H) and wheat, milled fractions (except flour).

Based on available processing data that showed residues of thiabendazole concentrated in dried citrus pulp by a factor of 1.6x and a HAFT of 5.2 ppm for whole citrus fruits, EPA expected residues of 8.3 ppm, which is below the current and reassessed tolerance of 10.0 ppm on whole citrus fruit. Therefore, the dried citrus pulp tolerance is no longer needed. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.242(a)(1) on citrus, dried pulp, postharvest.

Based on the MTDB for poultry and available exaggerated (125x MTDB) poultry feeding data which showed combined thiabendazole residues of concern in poultry tissues at <0.109 ppm and in egg yolks at 0.065 ppm, the Agency expects residues to be <0.027 ppm in poultry tissues and 0.015 ppm in eggs. Because these levels are below the combined LOQs of 0.3 ppm in tissues and 0.15 ppm in eggs for the enforcement method, the Agency concluded that there is no reasonable expectation of finding finite thiabendazole residues of concern in poultry tissues and eggs resulting from the feeding of thiabendazole treated crops to poultry. Therefore, tolerances on poultry and eggs are no longer needed. Consequently, under 40 CFR 180.6(a)(3), EPA is proposing to revoke tolerances in 40 CFR 180.242(a)(2) on poultry; poultry, meat byproducts; poultry, meat; and egg.

Based on the MTDB for beef cattle and swine and available exaggerated ruminant feeding data (1.9x and 6.7x MTDB in fat and muscle, respectively), combined thiabendazole residues of concern in the fat and meat of cattle were as high as 0.030 and 0.023 ppm, respectively. Because each of these levels is below the combined LOQ (0.1 ppm for each analyte), the Agency concluded that there is no reasonable expectation of finding finite thiabendazole residues of concern in the fat and meat of cattle, goats, hogs, horses, and sheep resulting from the feeding of thiabendazole treated crops to livestock. Therefore, tolerances on the fat of cattle, goats, hogs, horses, and sheep are no longer needed. Consequently, under 40 CFR 180.6(a)(3), EPA is proposing to revoke tolerances in 40 CFR 180.242(a)(2) on cattle, fat; goat, fat; hog, fat; horse, fat; and sheep, fat.

The proposed changes to include the metabolite benzimidazole in the tolerance expression for thiabendazole when finalized could make U.S. tolerances and Codex MRLs incompatible because the Codex MRLs for thiabendazole are currently expressed in terms of the parent for plant commodities and sum of the parent and 5-hydroxythiabendazole for animal commodities. Because of the lack of Codex MRLs on the meat of goats, hogs, horses, and sheep; proposed change in the tolerance expression for animal commodities, and data that show no reasonable expectation of finding finite thiabendazole residues of concern in the meat of cattle, goats, hogs, horses, and sheep, the Agency determined that the meat tolerances of goats, hogs, horses, and sheep are no longer needed and therefore should be revoked. Consequently, under 40 CFR 180.6(a)(3), EPA is proposing to revoke tolerances in 40 CFR 180.242(a)(2) on goat, meat; hog, meat; horse, meat; and sheep, meat. However, despite the expected difference in tolerance expression and undetectable residues, EPA is maintaining the tolerance on cattle meat at 0.1 ppm in order to harmonize as closely as possible with the Codex MRL of 0.1 mg/kg.

Based on available ruminant feeding data (1x MTDB) that showed combined thiabendazole residues of concern as high as 0.028 ppm in milk, which is below the combined LOQ of 0.1 ppm for the enforcement method, EPA determined that the tolerances on milk should be decreased from 0.4 to 0.1 ppm. Therefore, the Agency is proposing to decrease the tolerance in 40 CFR 180.242(a)(2) on milk to 0.1 ppm.

Based on available exaggerated (1.9x MTDB) ruminant feeding data that showed combined thiabendazole residues of concern as high as 0.28 ppm in liver and 0.687 ppm in kidney, EPA expected residues of 0.15 ppm in liver and 0.36 ppm in kidney at the 1x MTDB for beef cattle. The Agency determined that the tolerance for meat byproducts of cattle, goats, horses, and sheep should be increased from 0.1 to 0.4 ppm. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.242(a)(2) on cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts; and sheep, meat byproducts to 0.4 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available exaggerated ruminant feeding data and 14.7x MTDB for swine that showed combined thiabendazole residues of concern as high as 0.28 ppm in liver and 0.687 ppm in kidney, the Agency determined that the tolerance for combined thiabendazole residues of concern on hog meat byproducts should be increased from 0.1 ppm and set at the combined LOQ of 0.3 ppm for the analytes in the enforcement method. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.242(a)(2) on

hog, meat byproducts to 0.3 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data showing combined thiabendazole residues of concern as high as <0.022 ppm on sweet potatoes grown from treated seed roots, EPA determined that the postharvest tolerance for sweet potato from treated seed should be increased from 0.02 to 0.05 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.242(a)(1) on sweet potato (post-H to sweet potato intended only for use as seed) to 0.05 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available data that showed combined thiabendazole residues of concern as high as 5.0 ppm in or on pears and a HAFT for 3.4 ppm for apples, EPA determined that the tolerances on apples and pears should be decreased from 10.0 to 5.0 ppm and combined into a group tolerance. Therefore, the Agency is proposing to decrease the tolerances in 40 CFR 180.242(a)(1) on apple, postharvest and pear, postharvest and combine them into a group tolerance for fruit, pome, group 11, postharvest at 5.0 ppm.

Based on available processing data that showed residues of thiabendazole concentrated in wet apple pomace by a factor of 3.5x and a HAFT of 3.4 ppm for apples, EPA expected combined residues of 11.9 ppm in wet apple pomace. Therefore, the Agency determined that a tolerance on wet apple pomace should be established at 12.0 ppm. Consequently, EPA is proposing to establish a tolerance in 40 CFR 180.242(a)(1) on apple, wet pomace at 12.0 ppm.

Based on available processing data that showed residues of thiabendazole concentrated in citrus oil by an average factor of 2.4x and a HAFT of 5.2 ppm for whole citrus fruits, EPA expected combined residues of 12.5 ppm in citrus oil. Therefore, the Agency determined that a tolerance on citrus oil should be established at 15.0 ppm. Consequently, EPA is proposing to establish a tolerance in 40 CFR 180.242(a)(1) on citrus, oil at 15.0 ppm.

In addition, EPA is proposing to revise commodity terminology in 40 CFR 180.242(a)(1) to conform to current Agency practice as follows: ''fruit, citrus, postharvest'' to ''fruit, citrus, group 10, postharvest.''

Currently, there is an active registration for thiabendazole use on sugar beets. The registrant does not intend to support the sugar beet tolerances. Consequently, EPA will not take action to revoke the sugar beet tolerances in 40 CFR 180.242 at this time, but will follow-up with the registrant on amending the registration in order to delete the sugarbeet use and address the tolerances in a future publication in the **Federal Register**.

10. *Thidiazuron*. Based on available processing data that show thidiazuron residues on cottonseed hulls concentrated slightly by a factor of 1.4x, EPA expects residues not to exceed the current recommended raw agricultural commodity tolerance of 0.3 ppm for cottonseed. Therefore, the tolerance on cottonseed hulls is no longer needed. Consequently, EPA is proposing to revoke the tolerance in 40 CFR 180.403(a) on cotton, hulls.

Cottonseed meal is a common feeding source for poultry. A cottonseed meal processing study at 5x application rate showed that thidiazuron residues were less than the LOQ (<0.05 ppm) and did not concentrate, and EPA determined that there is no reasonable expectation of finite residues in poultry and eggs. Therefore, the tolerances on poultry fat, meat, meat byproducts, and egg are no longer needed under 40 CFR 180.6(a)(3). Consequently, the Agency is proposing to revoke the tolerances in 40 CFR 180.403 for the combined residues of thidiazuron and its aniline containing metabolites in or on poultry, fat; poultry, meat; poultry, meat byproducts; and egg.

Based on available data showing thidiazuron residues were as high as 0.21 ppm on cottonseed, EPA determined that the tolerance should be decreased from 0.4 to 0.3 ppm. Therefore, the Agency is proposing to decrease the tolerance in 40 CFR 180.403(a) on cotton, undelinted seed to 0.3 ppm.

Pending storage stability and raw data to validate the ruminant feeding study, EPA determined that the tolerances for thidiazuron and its metabolites of concern are not expected to exceed 0.4 ppm for fat, meat, and meat byproducts, and therefore should be increased from 0.2 to 0.4 ppm. Therefore, the Agency is proposing to increase the tolerances in 40 CFR 180.403(a) on cattle, fat; cattle, meat; cattle, meat byproducts; goat, fat; goat, meat; goat, meat byproducts; hog, fat; hog, meat; hog, meat byproducts; horse, fat; horse, meat; horse, meat byproducts; sheep, fat; sheep, meat; and sheep, meat byproducts to 0.4 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pestcide chemical residue.

Based on available data that showed thidiazuron residues as high as 22.12 ppm, EPA determined that a tolerance of 24.0 ppm should be established for cotton gin byproducts. Therefore, the Agency is proposing to establish a tolerance in 40 CFR 180.403(a) for the combined residues of thidiazuron and its aniline containing metabolites in or on cotton, gin byproducts at 24.0 ppm.

There are no Codex MRLs for thidiazuron.

11. *Tribuphos*. EPA is proposing to remove the ''negligible residue'' designation from all entries in 40 CFR 180.272 to conform to current Agency administrative practice.

Based on the MTDB for cattle and available exaggerated ruminant feeding data (2.7x MTDB), tribuphos residues in milk and fat were expected by the Agency at 1x to be as high as 0.008 ppm and 0.13 ppm, respectively. Therefore, the Agency determined that the tolerance on milk should be increased from 0.002 ppm to the LOQ (0.01 ppm), and that tolerances on the fat of cattle, goats, and sheep should be increased from 0.02 to 0.15 ppm and tolerances on the fat of hogs and horses should be established at 0.15 ppm. Therefore, EPA is proposing in 40 CFR 180.272 to increase tolerances on cattle, fat; goat, fat; and sheep, fat to 0.15 ppm; and establish tolerances on hog, fat and horse, fat at 0.15 ppm. Also, EPA is proposing in 40 CFR 180.272 to increase the tolerance on milk to 0.01 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on the MTDB for cattle and available exaggerated ruminant feeding data (2.7x MTDB), tribuphos residues in meat and liver were expected by the Agency at 1x to be as high as 0.015 ppm and 0.019 ppm, respectively. Therefore, the Agency determined that the tolerances on meat and meat byproducts of hogs and horses should all be established at 0.02 ppm. Therefore, EPA is proposing in 40 CFR 180.272 to establish tolerances on hog, meat; hog, meat byproducts; horse, meat; and horse, meat byproducts at 0.02 ppm.

Based on available data (where sites had a 7–day PHI, with the exception of one site with a 9–day PHI) that showed tribuphos residues as high as 36.39 ppm, EPA determined that a tolerance of 40.0 ppm should be established for cotton gin byproducts. Therefore, the Agency is proposing to establish a

tolerance in 40 CFR 180.272 on cotton, gin byproducts at 40.0 ppm.

There are no Codex MRLs for tribuphos.

B. What is the Agency's Authority for Taking this Action?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions in follow-up to the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). The safety finding determination under section 408 of the FFDCA standard is discussed in detail in each Post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs for chloroneb, cypermethrin, methidathion, nitrapyrin, oxyfluorfen, pirimiphos-methyl, thiabendazole, thidiazuron, and tribuphos, and a TRED for tebuthiuron, whose RED was completed prior to FQPA. A RED for sulfosate was not needed because it was registered after November 1, 1984 and not subject to reregistration eligibility, and its tolerances were reassessed prior to completion of a TRED, such that a TRED for sulfosate was no longer needed because EPA made a safety finding which reassessed its tolerances according to the FFDCA standard, maintaining them when new tolerances were established as noted in Unit II.A. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FFDCA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select Regulations and Proposed Rules and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.

2. There is a reasonable expectation that finite residues will exist.

3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

C. When do These Actions Become Effective?

With the exception of revocation of regional tolerances for methidathion on alfalfa forage, alfalfa hay, timothy forage, and timothy hay for which EPA is proposing specific expiration/revocation dates, the Agency is proposing that the actions herein become effective on the date of publication of the final rule in the **Federal Register.** With the exception of the revocation of these four regional tolerances for methidathion, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been completely exhausted and that treated commodities have had sufficient time for passage through the channels of trade. EPA is proposing an expiration/revocation date of March 31, 2008 for the methidathion tolerances on alfalfa forage, alfalfa hay, timothy forage, and timothy hay. The Agency believes that, because their regional registrations expire on December 31, 2007, the revocation date of March 31, 2008 allows sufficient time for passage of treated commodities through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance actions in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standards established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission, as required by section 408(b)(4) of the FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in Unit II.A. Specific tolerance actions in this rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or 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). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will

not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: April 17, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be 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 180.242 is amended as follows:

i. Paragraphs (a)(1) and (2) are revised.

ii. The introductory text to paragraph (b) is revised to read as follows:

§ 180.242 Thiabendazole; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the fungicide thiabendazole (2–(4-thiazolyl)benzimidazole) and its metabolite benzimidazole (free and conjugated) in or on the following raw agricultural commodities:

Commodity	Parts per million
Apple, wet pomace	12.0
Avocado [1]	10.0
Banana, postharvest	3.0
Bean, dry, seed	0.1
Beet, sugar, dried pulp	3.5
Beet, sugar, roots	0.25
Beet, sugar, tops	10.0
Cantaloupe [1]	15.0
Carrot, roots, postharvest	10.0
Citrus, oil	15.0
Fruit, citrus, group 10, postharvest	10.0
Fruit, pome, group 11, postharvest	5.0
Mango	10.0
Mushroom	40.0
Papaya, postharvest	5.0
Potato, postharvest	10.0
Soybean	0.1
Strawberry [1]	5.0
Sweet potato (POST-H to sweet potato intended only for use as seed)	0.05
Wheat, grain	1.0
Wheat, straw	1.0

[1] There are no U.S. registrations on the indicated commodity.

(2) Tolerances are established for the combined residues of thiabendazole (2–(4-thiazolyl)benzimidazole) and its metabolites 5-hydroxythiabendazole (free and conjugated) and benzimidazole in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, meat	0.1
Cattle, meat byproducts	0.4
Goat, meat byproducts	0.4
Hog, meat byproducts	0.3
Horse, meat byproducts	0.4
Milk	0.1
Sheep, meat byproducts	0.4

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of thiabendazole (2–(4-thiazolyl)benzimidazole) and its metabolite benzimidazole (free and conjugated), in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances are specified in the following table. The tolerances will expire on the dates specified in the table.

* * * * *

3. Section 180.257 is amended by revising paragraph (a) to read as follows:

§ 180.257 Chloroneb; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide chloroneb (1,4-dichloro-2,5-dimethoxybenzene) and its metabolite 2,5-dichloro-4-methoxyphenol (free and conjugated), calculated as chloroneb, in or on the following raw agricultural commodities:

Commodity	Parts per million
Bean, dry, seed	0.2
Bean, succulent	0.2
Beet, sugar, roots	0.2
Beet, sugar, tops	0.2
Cowpea, forage	2.0
Cowpea, hay	2.0
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, meat byproducts	0.2
Cotton, gin byproducts	1.0

Commodity	Parts per million
Cotton, undelinted seed	0.2
Goat, fat	0.2
Goat, meat	0.2
Goat, meat byproducts	0.2
Hog, fat	0.2
Hog, meat	0.2
Hog, meat byproducts	0.2
Horse, fat	0.2
Horse, meat	0.2
Horse, meat byproducts	0.2
Milk	0.05
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, meat byproducts	0.2
Soybean, forage	2.0
Soybean, hay	2.0
Soybean, seed	0.2

* * * * *

4. Section 180.272 is amended by revising the table in paragraph (a) to read as follows:

§ 180.272 Tribuphos; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Cattle, fat	0.15
Cattle, meat	0.02
Cattle, meat byproducts	0.02
Cotton, gin byproducts	40.0
Cotton, undelinted seed	4.0
Goat, fat	0.15
Goat, meat	0.02
Goat, meat byproducts	0.02
Hog, fat	0.15
Hog, meat	0.02
Hog, meat byproducts	0.02
Horse, fat	0.15
Horse, meat	0.02
Horse, meat byproducts	0.02
Milk	0.01
Sheep, fat	0.15
Sheep, meat	0.02
Sheep, meat byproducts	0.02

* * * * *

5. Section 180.298 is amended by revising the tables in paragraphs (a) and (c) to read as follows:

§ 180.298 Methidathion; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Almond, hulls	6.0
Artichoke, globe	0.05
Citrus, oil	420.0
Cotton, undelinted seed	0.2
Fruit, citrus, group 10, except tangerine	4.0
Fruit, pome, group 11	0.05
Fruit, stone, group 12	0.05
Mango	0.05
Nut, tree, group 14	0.05
Olive	0.05
Safflower, seed	0.5
Sorghum, forage, forage	2.0
Sorghum, grain, forage	2.0
Sorghum, grain, grain	0.2
Sorghum, grain, stover	2.0
Sunflower, seed	0.5
Tangerine	6.0

* * * * *

(c) * * *

Commodity	Parts per million	Expiration/Revocation Date
Alfalfa, forage	5.0	3/31/2008
Alfalfa, hay	5.0	3/31/2008
Kiwifruit	0.1	None
Longan	0.1	None
Starfruit	0.1	None
Sugar apple	0.2	None
Timothy, forage	5.0	3/31/2008
Timothy, hay	5.0	3/31/2008

* * * * *

6. Section 180.350 is amended by revising the table in paragraph (a) to read as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Corn, field, forage	1.0
Corn, field, grain	0.1
Corn, field, milled byproducts	0.2
Corn, field, stover	1.0
Corn, pop, grain	0.1
Corn, pop, stover	1.0
Corn, sweet, forage	1.0
Corn, sweet, kernel plus cob with husks removed	0.1
Corn, sweet, stover	1.0
Sorghum, forage, forage	0.5
Sorghum, grain, forage	0.5
Sorghum, grain, grain	0.1
Sorghum, grain, stover	0.5
Wheat, bran	3.0
Wheat, forage	2.0
Wheat, grain	0.5
Wheat, milled byproducts, except flour	2.0
Wheat, straw	6.0

* * * * *

7. Section 180.381 is amended by revising the tables in paragraphs (a) and (c) to read as follows:

§ 180.381 Oxyfluorfen; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Almond, hulls	0.1
Artichoke, globe	0.05
Avocado	0.05
Banana	0.05
Broccoli	0.05
Cabbage	0.05
Cattle, fat	0.01
Cattle, meat	0.01
Cattle, meat byproducts	0.01
Cauliflower	0.05
Cocoa bean, dried bean	0.05
Coffee, bean, green	0.05
Corn, field, grain	0.05
Corn, pop, grain	0.05
Cotton, undelinted seed	0.05
Date	0.05
Egg	0.03
Feijoa	0.05
Fig	0.05
Fruit, pome, group 11	0.05
Fruit, stone, group 12	0.05
Goat, fat	0.01
Goat, meat	0.01
Goat, meat byproducts	0.01
Grape	0.05
Hog, fat	0.01
Hog, meat	0.01
Hog, meat byproducts	0.01
Horse, fat	0.01
Horse, meat	0.01
Horse, meat byproducts	0.01
Horseradish	0.05
Kiwifruit	0.05
Milk	0.01
Nut, tree, group 14	0.05
Olive	0.05
Onion, bulb	0.05
Peppermint, tops	0.05
Persimmon	0.05
Pistachio	0.05
Pomegranate	0.05
Poultry, fat	0.2
Poultry, meat	0.01
Poultry, meat byproducts	0.01
Sheep, fat	0.01
Sheep, meat	0.01
Sheep, meat byproducts	0.01
Soybean	0.05

Commodity	Parts per million
Spearmint, tops	0.05

* * * * *

(c) * * *

Commodity	Parts per million
Blackberry	0.05
Chickpea, seed	0.05
Grass, forage	0.05
Grass, hay	0.05
Grass, seed screenings	0.05
Guava	0.05
Papaya	0.05
Raspberry	0.05
Taro, corm	0.05
Taro, leaves	0.05

* * * * *

8. Section 180.390 is revised to read as follows:

§ 180.390 Tebuthiuron; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the herbicide tebuthiuron (*N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea) and its metabolites *N*–(5–(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, and *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea in or on the following raw agricultural commodities:

Commodity	Parts per million
Grass, forage	10.0
Grass, hay	10.0

(2) Tolerances are established for the combined residues of the herbicide tebuthiuron (*N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea) and its metabolites *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)urea, 2-dimethylethyl-5-amino-1,3,4-thiadiazole, and *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	1.0
Cattle, meat	1.0
Cattle, meat byproducts	5.0
Goat, fat	1.0
Goat, meat	1.0
Goat, meat byproducts	5.0
Horse, fat	1.0
Horse, meat	1.0
Horse, meat byproducts	5.0
Sheep, fat	1.0
Sheep, meat	1.0
Sheep, meat byproducts	5.0

(3) A tolerance is established for the combined residues of the herbicide tebuthiuron (*N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N,N'*-dimethylurea) and its metabolites *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N*-methylurea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)urea, *N*–(5–(1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea, and *N*–(5–(2-hydroxy-1,1-dimethylethyl)-1,3,4-thiadiazol-2-yl)-*N'*-hydroxymethyl-*N*-methylurea in or on the following raw agricultural commodities:

Commodity	Parts per million
Milk	0.8

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

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

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

9. Section 180.403 is amended by revising the table in paragraph (a) to read as follows:

§ 180.403 Thidiazuron; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Cattle, fat	0.4
Cattle, meat	0.4
Cattle, meat byproducts	0.4
Cotton, gin byproducts	24.0
Cotton, undelinted seed	0.3
Goat, fat	0.4
Goat, meat	0.4
Goat, meat byproducts	0.4
Hog, fat	0.4
Hog, meat	0.4
Hog, meat byproducts	0.4
Horse, fat	0.4
Horse, meat	0.4
Horse, meat byproducts	0.4
Milk	0.05
Sheep, fat	0.4
Sheep, meat	0.4
Sheep, meat byproducts	0.4

* * * * *

10. Section 180.409 is amended by revising paragraph (a) to read as follows:

§ 180.409 Pirimiphos-methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide pirimiphos-methyl (O–(2-diethylamino-6-methyl-4-pyrimidinyl) *O,O*-dimethyl phosphorothioate) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.02
Cattle, meat byproducts	0.02
Corn, field, grain	8.0
Corn, pop, grain	8.0
Goat, fat	0.02
Goat, meat byproducts	0.02
Grain, aspirated fractions	20.0
Hog, fat	0.02
Hog, meat byproducts	0.02
Horse, fat	0.02
Horse, meat byproducts	0.02
Poultry, fat	0.02
Sheep, fat	0.02
Sheep, meat byproducts	0.02
Sorghum, grain, grain	8.0

* * * * *

11. Section 180.418 is amended by revising the tables in paragraphs (a)(1), (a)(2), and (b) to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

(a) *General.* (1) * * *

Commodity	Parts per million
Brassica, head and stem, subgroup 5A	2.0
Brassica, leafy greens, subgroup 5B	14.0
Cattle, fat	1.0
Cattle, meat	0.2
Cattle, meat byproducts	0.05
Cotton, gin byproducts	11.0
Cotton, undelinted seed	0.5
Egg	0.05
Goat, fat	1.0
Goat, meat	0.2
Goat, meat byproducts	0.05
Hog, fat	0.1
Hog, meat	0.05
Horse, fat	1.0
Horse, meat	0.2
Horse, meat byproducts	0.05
Lettuce, head	4.0
Milk, fat (reflecting 0.10 in whole milk)	2.5
Onion, bulb	0.1
Onion, green	6.0
Pecan	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Sheep, fat	1.0
Sheep, meat	0.2
Sheep, meat byproducts	0.05

(2) * * *

Commodity	Parts per million
Alfalfa, hay	15.00
Alfalfa, forage	5.00
Alfalfa, seed	0.50
Almond, hulls	6
Animal feed, nongrass, group 18, forage	8
Animal feed, nongrass, group 18, hay	40

Commodity	Parts per million
Beet, sugar, roots	0.05
Beet, sugar, tops	0.20
Berry, group 13	0.8
Brassica, head and stem, subgroup 5A	2.00
Brassica, leafy greens, subgroup 5B	14.00
Cabbage	2.00
Cattle, fat	1.00
Cattle, meat	0.2
Cattle, meat byproducts	0.05
Cilantro, leaves	10
Corn, field, forage	0.20
Corn, field, grain	0.05
Corn, field, stover	3.00
Corn, pop, grain	0.05
Corn, pop, stover	3.00
Corn, sweet, forage	15.00
Corn, sweet, kernel plus cob with husks removed	0.05
Corn, sweet, stover	15.00
Cotton, undelinted seed	0.5
Egg	0.05
Food/feed items (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments	0.05
Fruit, pome, group 11	2
Fruit, stone, group 12	1
Goat, fat	1.00
Goat, meat	0.2
Goat, meat byproducts	0.05
Grain, aspirated fractions	10.0
Grape	2
Grass, forage, group 17	10
Grass, hay, group 17	35
Hog, fat	0.1
Hog, meat	0.05
Horse, fat	1.00
Horse, meat	0.2
Horse, meat byproducts	0.05
Milk, fat (reflecting 0.10 in whole milk)	2.50
Nut, tree, group 14	0.05
Onion, bulb	0.10
Onion, green	3.00
Pea and bean, dried shelled, except soybean, subgroup 6C	0.05
Pea and bean, succulent shelled, subgroup 6B	0.1
Peanut	0.05
Pecan	0.05
Poultry, fat	0.05
Poultry, meat	0.05
Rapeseed	0.2
Rice, grain	1.50
Rice, hulls	6.00
Rice, straw	2.00
Sheep, fat	1.00
Sheep, meat	0.2
Sheep, meat byproducts	0.05
Sorghum, grain, forage	0.1
Sorghum, grain, grain	0.5
Sorghum, grain, stover	5.0
Soybean, seed	0.05
Sugarcane, cane	0.60
Sunflower	0.2
Sunflower, refined oil	0.5
Turnip, greens	14
Vegetable, cucurbit, group 9	0.2
Vegetable, fruiting, group 8	0.2
Vegetable, leafy, except brassica, group 4	10.00
Vegetable, legume, edible podded, subgroup 6A	0.5
Vegetable, root and tuber, group 1, except sugar beet	0.1
Wheat, forage	3.0
Wheat, grain	0.2
Wheat, hay	6.0
Wheat, straw	7.0

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
Flax, meal	0.2	6/30/2008
Flax, seed	0.2	6/30/2008

* * * * *

§ 180.489 [Removed]

12. Section 180.489 is removed.

[FR Doc. E7–8373 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 07–81; FCC 07–55]

Assessment and Collection of Regulatory Fees For Fiscal Year 2007

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission will revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2007. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and 9(b)(3), respectively, for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

DATES: Comments are due May 3, 2007, and reply comments are due May 11, 2007.

ADDRESSES: You may submit comments, identified by MD Docket No. 07–81, by any of the following methods:

<bullet≤ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

<bullet≤ *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.

<bullet≤ *E-mail: ecfs@fcc.gov.* Include MD Docket No. 07–81 in the subject line of the message.

<bullet≤ *Mail:* Commercial overnight mail (other than U.S. Postal Service Express Mail, and Priority Mail, must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

SUPPLEMENTARY INFORMATION:

Adopted: April 16, 2007.

Released: April 18, 2007.

By the Commission:

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I. Introduction

1. In this *Notice of Proposed Rulemaking* (NPRM), we propose to collect $290,295,160 in regulatory fees for Fiscal Year (FY) 2007, pursuant to section 9 of the Communications Act of 1934, as amended (the Act). These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

2. In this NPRM, we seek comment on the development of FY 2007 regulatory fees collected pursuant to section 9 of the Act. For FY 2007, we tentatively propose to retain the established methods and policies that the Commission has used to collect section 9 regulatory fees since FY 2003. In addition to seeking comment on the assessment methodology, the Commission typically seeks comment on various administrative and operational issues affecting the collection of regulatory fees. For the FY 2007 regulatory fee cycle, we propose to retain the vast majority of the administrative measures used for notification, assessment and pre-billing of regulatory fees in previous years, such as generating pre-completed regulatory fee assessment forms for certain regulatees. Consistent with past practice, we seek comment on ways to improve the Commission's administrative processes for notifying entities of their regulatory fee obligations and collecting their payments. Finally, we seek comment on applying the same regulatory fee obligations applicable to interstate telecommunications providers to providers of interconnected voice over Internet Protocol services.

3. The Commission is obligated to collect $290,295,160 in regulatory fees during FY 2007 to fund the Commission's operations. Consistent with our established practice, we intend to collect these regulatory fees in the August–September 2007 time frame in order to collect the required amount by the end of the fiscal year.

A. FY 2007 Regulatory Fee Assessment Methodology

1. Development of FY 2007 Regulatory Fees

a. Calculation of Revenue and Fee Requirements

4. For our FY 2007 regulatory fee assessment, we propose to use essentially the same section 9 regulatory fee assessment methodology adopted for FY 2006. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via section 9 regulatory fees. The results of our proposed FY 2007 regulatory fee assessment methodology (including a comparison to the prior year's results) are contained in Appendix C. For FY 2007, we propose to use the receipts collected through the FY 2006 regulatory fees as the basis for calculating the amount the Commission must collect in FY 2007. To collect the $290,295,160 required by law, we propose to adjust the FY 2006 amount downward by approximately 2.84 percent.[2] Consistent with past practice,

[1] 47 U.S.C. 159(a).

[2] The percentage decrease of approximately 2.84 percent is based on the total amount of regulatory fees that was mandated by Congress to be collected in FY 2006, which included an amount of

we propose to divide the FY 2007 amount by the number of payment units in each fee category to determine the unit fee.[3] As in prior years, for cases involving small fees (*e.g.*, licenses that are renewed over a multiyear term), we propose to divide the resulting unit fee by the term of the license. We propose to round these unit fees consistent with the requirements of section 9(b)(2).

b. Additional Adjustments to Payment Units

5. In calculating the FY 2007 regulatory fees proposed in Attachment D, we further adjusted the FY 2006 list of payment units (Attachment B) based upon licensee databases and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. In some instances, Commission licensee databases were used, while in other instances, actual prior year payment records and/or industry and trade association projections were used in determining the payment unit counts.[4] Where appropriate, we adjusted and/or rounded our final estimates to take into consideration events that may impact the number of units for which regulatees submit payment, such as waivers and/or exemptions that may be filed in FY 2007, and fluctuations in the number of licensees or station operators due to economic, technical, or other reasons. Therefore, when we state that our estimated FY 2007 payment units are based on FY 2006 actual payment units, the number may have been rounded or adjusted slightly to account for these variables.

6. Additional factors are considered in determining regulatory fees for AM and FM radio stations. These factors are facility attributes and the population served by the radio station. The calculation of the population served is determined by coupling current U.S. Census Bureau data with technical and engineering data, as detailed in Attachment E. Consequently, the population served, as well as the class and type of service (AM or FM), determines the regulatory fee amount to be paid.[5]

2. Commercial Mobile Radio Service (CMRS) Messaging Service

7. Since FY 2003, the Commission has maintained the CMRS Messaging regulatory fee at the rate that was established in FY 2002 (*i.e.*, $0.08 per subscriber) to account for the messaging industry's declining subscriber base.[6] We note that between FY 1997 and FY 2006, the CMRS Messaging subscriber base declined 79.7 percent from 40.8 million to 8.3 million, respectively.[7] We propose to continue the same approach for regulatory fees applicable to the messaging industry in FY 2007, thereby maintaining the industry's regulatory fee at $0.08 per subscriber. We seek comment on this proposal.

3. Broadband Radio Service (BRS)/ Educational Broadband Service (EBS)

8. Recently, the Commission adopted a megahertz-based formula for BRS licensees with tiered fees by markets, similar to but more complex than the Commission's annual scale of regulatory fees paid by broadcast television stations.[8] According to this formula, annual fees will be charged on a per-megahertz basis based upon three categories of Basic Trading Areas (BTA) population rankings: [9] Licensees in BTA rankings 1–60 will pay the highest fee, licensees in BTA rankings 61–200 will pay a lesser fee, and licensees in BTA rankings 201–493 will pay the lowest fee.[10] Because this formula is complex, we are assessing the impact of this methodology (using a per-megahertz formula and a BTA populating ranking) on the manner in which regulatory fees are calculated for this class of licensees. We seek comment on how to devise a simple method of calculating regulatory fees that incorporates BTA population rankings and a per-megahertz fee for future fiscal years. We specifically seek comment on a formula for calculating regulatory fees that not only incorporates BTAs and a per-megahertz fee, but a formula that is also sensitive to rural operators in less densely populated areas. We seek comment on this proposal. Due to the complexities mentioned above and the need for detailed analysis, however, we will not implement any such changes for FY 2007.

4. International Bearer Circuits

9. On February 6, 2006, VSNL Telecommunications (US) Inc. (VSNL) filed a Petition for Rulemaking urging the Commission to modify the current international bearer circuit fee rules and policies as applied to non-common carrier (*i.e.*, private) submarine cable operators.[11] We issued a Public Notice designating the proceeding as RM–11312 and requesting comment on the

$288,771,000 in regulatory fees pursuant to section 9 of the Communications Act of 1934, as amended, and an additional $10,000,000 as required by section 3013 of the Deficit Reduction Act (Public Law 109–171). Together, the total amount of regulatory fees mandated by Congress to be collected in FY 2006 was $298,771,000. Also, the decrease in regulatory fee payments of approximately 2.84 percent in FY 2007 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of estimated payment units in a service category, and then adjusted for rounding, the actual fee will likely differ by an amount more or less than 2.84 percent. For example, in industries where the number of payment units is declining, the per-unit regulatory fee amount for FY 2007 may actually be more than the amount for FY 2006.

[3] In many instances, the regulatory fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a per-unit fee (such as for International Bearer Circuits), a per-unit subscriber fee (such as for Cable, Commercial Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee). The payment unit is the measure upon which the fee is based, such as a licensee, regulatee, subscriber fee, etc.

[4] The databases we consulted include, but are not limited to, the Commission's Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS). We also consulted industry sources including, but not limited to, *Television & Cable Factbook* by Warren Publishing, Inc. and the *Broadcasting and Cable Yearbook* by Reed Elsevier, Inc., as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in Telephone Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast and Annual CMRS Competition Report.* For additional information on source material, see Attachment B.

[5] In addition, beginning in FY 2005, we established a procedure by which we set regulatory fees for AM and FM radio and VHF and UHF television Construction Permits each year at an amount no higher than the lowest regulatory fee in that respective service category. For example, the regulatory fee for a Construction Permit for an AM radio station will never be more than the regulatory fee for an AM Class C radio station serving a population of less than 25,000.

[6] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2003,* MD Docket No. 03–83, Report and Order, 18 FCC Rcd 15985, 15992, para. 21 (2003).

[7] The 40.8 million number represents a unit estimate from *Assessment and Collection of Regulatory Fees for Fiscal Year 1997*, MD Docket No. 96–186, Report and Order, 12 FCC Rcd 17161 (1997), and the 8.3 million figure represents the number of paid units as of fiscal year end 2006.

[8] *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, 21 FCC Rcd 5606, 5756–5759, paras. 367–376 (2006) (*BRS/EBS Second Report and Order*).

[9] For BRS licensees that are licensed by geographic licensed service area (GSA), the BTA is the geographic center point of where its GSA is located.

[10] *BRS/EBS Second Report and Order,* 21 FCC Rcd 5759, para. 376. (Generally, BTAs ranked 1–60 have a population greater than 1 million, BTAs ranked 61–200 have a population 250,000 to 1 million, and BTAs ranked 201–493 have a population of less than 250,000.)

[11] *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM–11312 (filed Feb. 6, 2006) (VSNL Petition).

Petition.[12] We continue to review the record in that proceeding.

5. Interconnected Voice Over Internet Protocol Service Providers

10. We tentatively conclude that providers of interconnected voice over Internet Protocol (''VoIP'') service [13] should pay regulatory fees. During FY 2006, the Commission concluded that providers of interconnected VoIP services should contribute to the Universal Service Fund.[14] Based on section 9's broad mandate that the Commission ''assess and collect regulatory fees to recover the costs'' of regulatory activities [15] and our analysis in the *2006 Interim Contribution Methodology Order*, we tentatively conclude that the Commission has the legal authority to extend regulatory fee obligations to interconnected VoIP service providers.[16] We seek comment on whether we should assess regulatory fees on providers of interconnected VoIP services based on their revenue, which would be consistent with the regulatory fee methodology used for interstate telecommunications service providers, or whether we should assess regulatory fees using a numbers-based approach, which would be consistent with the methodology used for CMRS providers.

B. Administrative and Operational Issues

11. We seek comment on the administrative and operational processes used to collect the annual section 9 regulatory fees. Although these issues do not affect the amount of regulatory fees parties are obligated to submit, the administrative and operational issues affect the process of submitting payment. We invite comment on ways to improve these processes.

1. Use of Fee Filer

12. We continue to encourage regulatees to use the Commission's online electronic Fee Filer application. Using the Commission's Fee Filer application reduces paperwork burdens on payors because it eliminates the need to file a FCC Form 159. Regulatees submitting more than twenty-five (25) Form 159–Cs are strongly encouraged to use Fee Filer when sending their regulatory fee payment. We note that Fee Filer will accept credit card payments of up to $99,999.99.

2. Proposals for Notification and Collection of Regulatory Fees

13. In this section, we seek comment on the administrative processes that the Commission uses to notify regulatees and collect regulatory fees. Each year, we generate public notices and fact sheets that notify regulatees of the fee payment due date and provide additional information regarding regulatory fee payment procedures. Consistent with our established practice, we propose to provide public notices, fact sheets and all other relevant material on our Web site at *http://www.fcc.gov/fees/regfees.html* for the FY 2007 regulatory fee cycle. Regulatees are then expected to pay their yearly regulatory fees by filing FCC Form 159 or by accessing the Commission's Fee Filer web application. As a general practice, we will not send regulatory fee material to regulatees via surface mail. However, in the event that regulatees do not have access to the Internet, we will mail public notices and other relevant material upon request. Regulatees and the general public may request such information by contacting the FCC Financial Operations HelpDesk at (877) 480–3201, Option 4. We seek comment on ways to improve our administrative processes.

14. As discussed above, we do not send public notices and fact sheets to regulatees en masse. We propose, however, to continue to send specific regulatory fee pre-bills or assessment notifications via surface mail to the select fee categories discussed below.[17] Pre-bills are hardcopy billing statements that the Commission mails to certain regulatees. Currently, the Commission only sends pre-bills to interstate telecommunications service providers (ITSPs) and satellite space station licensees. The remaining regulatees do not receive pre-bills. We are pursuing our pre-billing initiatives as part of our effort to modernize our financial practices. These initiatives also provide licensees with notification of upcoming regulatory fees. We seek comment on expanding our pre-billing initiatives to include other regulatory fee service categories.

a. Interstate Telecommunications Service Providers (ITSPs)

15. In FY 2001, we began mailing pre-completed FCC Form 159–W assessments to carriers in an effort to assist them in paying their Interstate Telecommunications Service Provider (ITSP) regulatory fee. The fee amount on FCC Form 159–W was calculated from the FCC Form 499–A worksheet. Beginning in FY 2004, we mailed the completed FCC Form 159–W as a pre-bill, rather than as an assessment of amount due. Other than the manner in which Form 159–W payments were entered into our financial system, carriers experienced no procedural changes regarding the use of the FCC Form 159–W when submitting payment of their ITSP regulatory fees. We seek comment on continuing this pre-billing process in FY 2007.

16. We also propose to round lines 14 (total subject revenues) and 16 (total regulatory fee owed) on FCC Form 159–W to the nearest dollar. Line 14 must be rounded to a whole dollar amount because this data field is linked to the FCC Form 159 Remittance Advice Block 25A (quantity), which can only accept whole numbers. It logically follows that if line 14 must be rounded, then the form's final line that calculates the total fee owed (line 16) should be rounded to the nearest dollar, as well. Also, rounding lines 14 and 16 will nominally ease the filing and payment burdens of our Form 159–W filers. We seek comment on these proposals and on other ways that we could improve our pre-billing initiative for ITSPs.

b. Satellite Space Station Licensees

17. Beginning in FY 2004, we mailed regulatory fee pre-bills via surface mail to licensees in our two satellite space station service categories. Specifically, geostationary orbit space station (GSO) licensees receive bills requesting regulatory fee payment for satellites that (1) were licensed by the Commission and operational on or before October 1

[12] *See* Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice*, Report No. 2759 (rel. Feb. 15, 2006).

[13] *See* 47 CFR 9.3 for the definition of interconnected VoIP service.

[14] *See Universal Service Contribution Obligations for Providers of Interconnected Voice Over Internet Protocol (VoIP) Service,* WC Docket No. 06–122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7541, para. 46 (2006) (*2006 Interim Contribution Methodology Order*).

[15] 47 U.S.C. 159(1).

[16] *See 2006 Interim Contribution Methodology Order* 21 FCC Rcd at 7541, paras. 46–47 (finding that Title I gives the Commission subject matter jurisdiction over interconnected VoIP services and that imposition of a universal service contribution obligation is reasonably ancillary to effective performance of the Commission's obligations under section 254 of the Act). Here, the regulatory fee obligation would be reasonably ancillary to the Commission's obligations under section 9 of the Act.

[17] An assessment is a proposed statement of the amount of regulatory fees owed by an entity to the Commission (or proposed subscriber count to be ascribed for purposes of setting the entity's regulatory fee) but it is not entered into the Commission's accounting system as a current debt. A pre-bill is considered an account receivable in the Commission's accounting system. Pre-bills reflect the amount owed and have a payment due date of the last day of the regulatory fee payment window. Consequently, if a pre-bill is not paid by the due date, it becomes delinquent and is subject to our debt collection procedures. *See also* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910.

of the respective fiscal year; and (2) were not co-located with and technically identical to another operational satellite on that date (*i.e.*, were not functioning as a spare satellite). Non-geostationary orbit space station (NGSO) licensees received pre-bills requesting regulatory fee payment for systems that were licensed by the Commission and operational on or before October 1 of the respective fiscal year.

18. For FY 2007, we propose to continue mailing pre-bills for our GSO and NGSO satellite space station categories. We seek comment on this proposal. We emphasize that the pre-bills that we propose to generate for our GSO and NGSO licensees will only be for the satellite or system aspects of their respective operations. GSO and NGSO licensees typically have regulatory fee obligations in other service categories (such as earth stations, broadcast facilities, *etc.*), and we expect satellite operators to meet their full fee payment obligation for all of their FCC holdings. We seek comment on our proposal to generate regulatory fee pre-bills for our two satellite space station service categories.

c. Additional Service Categories for Billing

19. We propose to expand our section 9 regulatory fee pre-billing initiative to include the service categories for Earth Stations and Cable Television Relay Service (CARS) Stations, beginning in FY 2007. Pre-billing can be accomplished for these categories because they are comprised of relatively few payment units (relative to many other categories in our Schedule of Regulatory Fees), and because the Commission maintains licensing databases for both categories. We seek comment on our proposal to send regulatory fee pre-bills via surface mail to licensees of Earth Stations and CARS.

d. Media Services Licensees

20. Beginning in FY 2003, we sent fee assessment notifications via surface mail to media services entities on a per-facility basis. The notifications provided the assessed fee amount for the facility in question, as well as the data attributes that determined the fee amount. We have since refined this initiative with improved results.[18] We propose to continue our assessment initiative for media services licensees this year.[19] We seek comment on this proposal.

21. Consistent with procedures used last year, we propose to mail assessment notifications to licensees to their primary record of contact populated in CDBS (Consolidated Database System) and to their secondary record of contact, if available. We will continue to make the Commission-authorized web site available to licensees to update or correct any information concerning their facilities and to amend their fee-exempt status, if need be.[20] We seek comment on this proposal.

22. Under our proposal, licensees must still submit a completed FCC Form 159 Remittance Advice with their fee payments. The assessment notifications cannot be used as a substitute for a completed Form 159.

e. Commercial Mobile Radio Service (CMRS) Cellular and Mobile Services Assessments

23. As we have done in prior years, we propose to mail an assessment letter to Commercial Mobile Radio Service (CMRS) providers using data that is based on the Numbering Resource Utilization Forecast (NRUF) form, which includes a list of the carrier's Operating Company Numbers (OCNs) upon which the assessment is based.[21] Consistent with existing practice, the letters will not include OCNs with their respective assigned number counts, but rather, an aggregate total of assigned numbers for each carrier. We also propose to continue our procedure of giving entities an opportunity to amend their subscriber counts by sending two rounds of assessment letters—an initial assessment and a final assessment letter. We seek comment on this proposal.

24. If the number of subscribers on the initial assessment letter differs from the subscriber count the service provider provided on its NRUF form, the carrier can correct its subscriber count by returning the assessment letter or by contacting the Commission and stating a reason for the change, such as the purchase or the sale of a subsidiary, including the date of the transaction, and any other information that will help to justify a reason for the change.

25. If we receive no response or correction to our initial assessment letter, we will expect the fee payment to be based on the number of subscribers listed on the initial assessment. We will review all responses to initial assessment letters and determine whether a change in the number of subscribers is warranted. We will then generate and mail a final assessment letter. The final assessment letter will inform carriers as to whether or not we accept the changed number of subscribers. As in previous years, operators will certify their subscriber counts in Block 30 of the FCC Form 159 Remittance Advice when making their regulatory fee payments. We seek comment on our current procedures of assessing CMRS subscriber counts (for NRUF filers), and other ways to improve the process.

26. Although an initial and a final assessment letter will be mailed to carriers that have filed an NRUF form, some carriers may not be sent a letter of assessment because they did not file the NRUF form. We propose that these carriers compute their fee payment using the standard methodology [22] that is currently in place for CMRS Wireless services (*e.g.*, compute their subscriber counts as of December 31, 2006), and submit their payment accordingly on FCC Form 159. However, regardless of whether a carrier receives an assessment letter or computes the subscriber count itself, the Commission may audit the number of subscribers for which regulatory fees are paid. In the event that the Commission determines that the number of subscribers is inaccurate or that an insufficient reason is given for making a correction on the initial assessment letter, the Commission will assess the carrier for the difference between what was paid and what should have been paid.

27. We, therefore, propose to (1) derive the subscriber count from NRUF

[18] Some of those refinements have been to provide licensees with a Commission-authorized web site to update or correct any information concerning their facilities, and to amend their fee-exempt status, if need be. Also, our notifications now provide licensees with a telephone number to call in the event that they need customer assistance. The notifications themselves have been refined so that licensees of fewer than four facilities receive individual fee assessment postcards for their facilities; whereas licensees of four or more facilities now receive a single assessment letter that lists all of their facilities and the associated regulatory fee obligation for each facility.

[19] Fee assessments are proposed again to be issued for AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Low Power Television (LPTV) Stations and LPTV Translators/Boosters, to the extent that applicants, permittees and licensees of such facilities do not qualify as government entities or non-profit entities. Fee assessments have not been issued for broadcast auxiliary stations in prior years, nor will they be issued in FY 2007.

[20] The Commission-authorized web site for media services licensees is *http://www.fccfees.com.*

[21] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005 and Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Docket Nos. 05–59 and 04–73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12264, paras. 38–44 (2005) (*FY 2005 R&O and Order on Recon*).

[22] Federal Communications Commission, *Regulatory Fees Fact Sheet: What You Owe—Commercial Wireless Services for FY 2005* at 1 (rel. Jul. 2005).

data based on ''assigned'' number counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''); (2) provide carriers with an opportunity to revise their subscriber counts at the time when the initial assessment letter is mailed; and (3) require carriers to confirm their subscriber counts at the aggregate level using data in the NRUF report. We seek comment on these proposals.

f. Cable Television Subscribers

28. We propose to continue to permit cable television operators to base their regulatory fee payment on their company's aggregate year-end subscriber count, rather than requiring them to sub-report subscriber counts on a per community unit identifier (CUID) basis on the FCC Form 159 Remittance Advice. We seek comment on this proposal. Operators, after providing their company's aggregate subscriber count in Block 25A of the FCC Form 159, will still be required to certify the accuracy of the subscriber count in Block 30. This practice has worked well for the Commission the past three fiscal years and has eased administrative burdens for the cable television industry.

29. Last year, for the first time, we sent a message to e-mail addresses populated in the Media Bureau's Cable Operations and Licensing System (COALS) to notify recipients of the FY 2006 regulatory fee payment due date and the fee amount for basic cable television subscribers. We propose to continue this effort for FY 2007. We also propose to discontinue our practice of sending fee assessment letters via surface mail to cable television operators who are on file as having paid regulatory fees the previous fiscal year. We seek comment on our proposals.

3. Streamlined Regulatory Fee Payment Process for Commercial Mobile Radio Service (CMRS) Cellular and Mobile Providers

30. In FY 2006, we streamlined the CMRS payment process by eliminating the requirement for CMRS providers to identify their individual call signs when making their regulatory fee payment, requiring instead for CMRS providers to pay their regulatory fees only at the aggregate subscriber level without having to identify their various call signs.[23] We propose to continue this practice in FY 2007. We seek comment on this proposal. As an additional measure to reduce the administrative burden on CMRS licensees, we propose to consolidate the CMRS cellular and CMRS mobile fee categories into one fee category, thereby eliminating the requirement for CMRS providers to separate their subscriber counts into CMRS cellular and CMRS mobile fee categories during the regulatory fee payment process. We seek comment on this proposal.

31. In our FY 1998 *Report and Order*, the Commission classified Wireless Communications Service (WCS), which included Personal Communications Services (Part 24), as a CMRS Mobile Service, stating that the Commercial Mobile Radio Service (CMRS) is ''an 'umbrella' descriptive term attributed to various existing broadband services authorized to provide interconnected mobile radio services.'' [24] However, beginning in FY 1998, a separate fee code was provided for Personal Communications Service (PCS) to monitor the number of units in this category of service. In recent years, the need to track the number of units for CMRS cellular and CMRS mobile separately has become unnecessary, especially for regulatory fee purposes. Therefore, beginning in FY 2007, we propose to consolidate the CMRS cellular and CMRS mobile fee categories into one CMRS fee category. To illustrate, in FY 2007 the CMRS cellular fee category of ''0711'' and the CMRS mobile fee category of ''0712'' would be consolidated into the fee category of ''0711.'' Licensees paying regulatory fees for CMRS cellular and CMRS mobile will need only to identify their aggregate subscriber unit totals under the fee code of ''0711.'' We seek comment on this proposal.

4. Future Streamlining of the Regulatory Fee Assessment and Collection Process

32. We continue to welcome comments concerning our commitment to reviewing, streamlining, and modernizing our statutorily required fee assessment and collection procedures. Our areas of particular interest include: (1) The process for notifying licensees about changes in the annual Schedule of Regulatory Fees and how it can be improved; (2) the most effective way to disseminate regulatory fee assessments and bills, *e.g.*, through surface mail, e-mail, online Web site, or some other mechanism; (3) the fee payment process, including how the agency's online regulatory fee filing system (Fee Filer) can be enhanced; (4) the timing of fee payments, including whether we should alter the existing section 9 regulatory fee payment window in any way; and (5) the timing of fee assessments and pre-bills.

III. Procedural Matters

A. Payment of Regulatory Fees

1. De Minimis Fee Payment Liability

33. Consistent with past practice, regulatees whose total FY 2006 regulatory fee liability, including all categories of fees for which payment is due, amounts to less than $10 will be exempted from payment of FY 2007 regulatory fees.

2. Standard Fee Calculations and Payment Dates

34. The Commission will, for the convenience of payers, accept fee payments made in advance of the window for the payment of regulatory fees. Licensees are reminded that, under our current rules, the responsibility for payment of fees by service category is as follows:

(a) *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2006 for AM/FM radio stations, VHF/UHF television stations and satellite television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.

(b) *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2006. In instances where a permit or license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the permit or license as of the fee due date.

(c) *Wireless Services:* Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2006. The number of subscribers, units or circuits on December 31, 2006 will be used as the basis from which to calculate the fee payment.

The first eleven regulatory fee categories in our Schedule of Regulatory Fees (*see* Attachment D) pay what we refer to as ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount of their 5-year or 10-year term

[23] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2006*, MD Docket No. 06–68, Report and Order, 21 FCC Rcd 8092, 8105, para. 48 (2006).

[24] *See Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, MD Docket No. 98–36, Report and Order, 63 FR 35847, para. 49, and in Attachment H, Detailed Guidance on Who Must Pay Regulatory Fees, para. 14 (1998).

of initial license, and only pay regulatory fees again for the license at the time of its next renewal. So while we include these eleven categories in our Schedule of Regulatory Fees to publicize the fee amounts, we do not actually collect these fees on an annual basis.

(d) *Multichannel Video Programming Distributor Services (cable television operators and CARS licensees):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2006.[25] Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2006. In instances where a CARS license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date.

(e) *International Services:* Regulatory fees must be paid for earth stations, geostationary orbit space stations and non-geostationary orbit satellite systems that were licensed and operational on or before October 1, 2006. In instances where a license is transferred or assigned after October 1, 2006, responsibility for payment rests with the holder of the license as of the fee due date. Regulatory fees must be paid for international bearer circuits, the payments of which are determined by the number of active circuits as of December 31, 2006.[26]

B. Enforcement

35. As a reminder to all licensees, section 159(c) of the Communications Act requires us to impose an additional charge as a penalty for late payment of any regulatory fee. As in years past, a late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Regulatory fee payment must be received and stamped at the lockbox bank by the last day of the regulatory fee filing window, and not merely postmarked by the last day of the window. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the Commission's Red Light Rule (*see* 47 CFR 1.1910) and the provisions set forth in the Debt Collection Improvement Act of 1996 (DCIA). We also assess administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and 47 CFR 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. In case of partial payments (underpayments) of regulatory fees, the licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or not timely paid, then the 25 percent late charge penalty (and other charges and/or sanctions, as appropriate) will be assessed on the portion that is not paid in a timely manner.

36. Furthermore, our regulatory fee rules provide that we will withhold action on any applications or other requests for benefits filed by anyone who is delinquent in any non-tax debts owed to the Commission (including regulatory fees) and will ultimately dismiss those applications or other requests if payment of the delinquent debt or other satisfactory arrangement for payment is not made. *See* 47 CFR 1.1161(c), 1.1164(f)(5), and 1.1910. Failure to pay regulatory fees can also result in the initiation of a proceeding to revoke any and all authorizations held by the entity responsible for paying the delinquent fee(s).

C. Initial Regulatory Flexibility Analysis

37. With respect to this NPRM, an Initial Regulatory Flexibility Analysis (IRFA), is contained in Attachment A of the Appendix.[27] Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM specified *infra.* The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Initial Paperwork Reduction Act of 1995 Analysis

38. This NPRM does not contain proposed or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''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). Completion of the 159 family of forms required by the Commission's regulatory fee payment process is already approved by the Office of Management and Budget under information collections 3060–0589 and 3060–0949.

E. Ex Parte Rules

39. *Permit-But-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules.[28] *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally

[25] Cable television system operators should compute their basic subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Operators may base their count on ''a typical day in the last full week'' of December 2006, rather than on a count as of December 31, 2006.

[26] Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active international bearer circuits in any transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier satellite operators must pay a fee for each circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. Non-common carrier submarine cable operators are also to pay fees for any and all international bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001,* MD Docket No. 01–76, Report and Order, 16 FCC Rcd 13525, 13593 (2001); *Regulatory Fees Fact Sheet: What You Owe—International and Satellite Services Licensees for FY 2004* at 3 (rel. July 2004) (the fact sheet is available on the FCC web-site at: *http://hraunfoss.fcc.gov/edocs—public/attachmatch/DOC–249904A4.pdf*). On February 6, 2006, VSNL Telecommunications (US) Inc. filed a Petition for Rulemaking urging the Commission to reform the current International Bearer Circuit Fee rules and policies as applied to non-common carrier submarine cable operators. *See* Petition for Rulemaking of VSNL Telecommunications (US) Inc., RM–11312 (filed February 6, 2006). This Petition remains pending before the Commission, which has issued a Public Notice requesting comment on the petition. See Consumer and Governmental Affairs Bureau, Reference Information Center, *Public Notice,* Report No. 2759 (released February 15, 2006). The Commission intends to resolve the complex issues presented by this Petition separately, and any comments on these issues filed in the instant proceeding will be incorporated into, and addressed, with those filed on the Petition for Rulemaking.

[27] *See* 5 U.S.C. 603. In addition, the NPRM and the IRFA (or summaries thereof) will be published in the **Federal Register**.

[28] *See* 47 CFR 1.1206(b); *see also* 47 CFR 1.1202, 1.1203.

required.[29] Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

F. Filing Requirements

40. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,[30] interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) procedures for filing paper copies.[31]

41. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

42. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

<bullet≤ 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.

<bullet≤ 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.

<bullet≤ U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

43. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. These documents will also be available free online, via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

44. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

IV. Ordering Clauses

45. Accordingly, *it is ordered* that, pursuant to sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, and 303(r), this Notice of Proposed Rulemaking is hereby adopted.

46. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Attachment A—Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act (RFA),[32] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[33] In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[34]

I. Need for, and Objectives of, the Proposed Rules

48. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $290,295,160, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

II. Legal Basis

49. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[35]

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

50. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted.[36] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [37] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[38] A ''small business

[29] *See* 47 CFR 1.1206(b)(2).

[30] *See id.* 1.415, 1419.

[31] *Electronic Filing of Documents in Rulemaking Proceedings,* 13 FCC Rcd 11322 (1998).

[32] 5 U.S.C. 603. The RFA, 5 U.S.C. 601–612 has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[33] 5 U.S.C. 603(a).

[34] *Id.*

[35] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[36] 5 U.S.C. 603(b)(3).

[37] 5 U.S.C. 601(6).

[38] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with

concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[39]

51. Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.[40]

52. Small Organizations. Nationwide, there are approximately 1.6 million small organizations.[41]

53. Small Governmental Jurisdictions. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [42] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[43] We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' [44] Thus, we estimate that most governmental jurisdictions are small.

54. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' [45] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope.[46] We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

55. Incumbent Local Exchange Carriers (ILECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[47] According to Commission data,[48] 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

56. 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.[49] According to Commission data,[50] 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 94 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1.500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

57. 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.[51] According to Commission data,[52] 143 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 141 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our proposed action.

58. 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.[53] According to Commission data,[54] 770 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 747 have 1,500 or fewer employees and 23 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposed action.

59. 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.[55] According to Commission data,[56] 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our proposed action.

60. Interexchange Carriers (IXCs). Neither the Commission nor the SBA

the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[39] 15 U.S.C. 632.

[40] SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[41] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[42] 5 U.S.C. 601(5).

[43] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

[44] We assume that the villages, school districts, and special districts are small, and total 48,558. U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

[45] 15 U.S. C. 632.

[46] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. *See* 13 CFR 121.102(b).

[47] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110.

[48] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, ''Trends in Telephone Service'' at Table 5.3, Page 5–5 (June 2005) (hereinafter ''Trends in Telephone Service''). This source uses data that are current as of October 1, 2004.

[49] 13 CFR 121.201, NAICS code 517110.

[50] ''Trends in Telephone Service'' at Table 5.3.

[51] 13 CFR 121.201, NAICS code 517310.

[52] ''Trends in Telephone Service'' at Table 5.3.

[53] 13 CFR 121.201, NAICS code 517310.

[54] ''Trends in Telephone Service'' at Table 5.3.

[55] 3 CFR 121.201, NAICS code 517110.

[56] ''Trends in Telephone Service'' at Table 5.3.

has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[57] According to Commission data,[58] 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

61. 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.[59] According to Commission data,[60] 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

62. 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.[61] According to Commission data,[62] 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 88 have 1,500 or fewer employees and one has 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 our proposed action.

63. 800 and 800-Like Service Subscribers.[63] 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.[64] The most reliable source of information regarding the number of these service subscribers appears to be data the Commission receives from Database Service Management on the 800, 866, 877, and 888 numbers in use.[65] According to our data, at the end of December 2004, the number of 800 numbers assigned was 7,540,453; the number of 888 numbers assigned was 5,947,789; the number of 877 numbers assigned was 4,805,568; and the number of 866 numbers assigned was 5,011,291. We do not have data specifying the number of these subscribers that are independently owned and operated or have 1,500 or fewer employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,540,453 or fewer small entity 800 subscribers; 5,947,789 or fewer small entity 888 subscribers; 4,805,568 or fewer small entity 877 subscribers, and 5,011,291 or fewer entity 866 subscribers.

64. International Service Providers. There is no small business size standard developed specifically for providers of international service. The appropriate size standards under SBA rules are for the two broad census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under both categories, such a business is small if it has $13.5 million or less in average annual receipts.[66]

65. 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.'' [67] For this category, Census Bureau data for 2002 show that there were a total of 371 firms that operated for the entire year.[68] Of this total, 307 firms had annual receipts of under $10 million, and 26 firms had receipts of $10 million to $24,999,999.[69] Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

66. 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.''[70] For this category, Census Bureau data for 2002 show that there were a total of 332 firms that operated for the entire year.[71] Of this total, 259 firms had annual receipts of under $10 million and 15 firms had annual receipts of $10 million to $24,999,999.[72] Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

67. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [73] and ''Cellular and Other Wireless Telecommunications.'' [74] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[75] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[76] Thus, under

[57] 13 CFR 121.201, NAICS code 517110.

[58] ''Trends in Telephone Service'' at Table 5.3.

[59] 13 CFR 121.201, NAICS code 517110.

[60] ''Trends in Telephone Service'' at Table 5.3.

[61] 13 CFR 121.201, NAICS code 517310.

[62] ''Trends in Telephone Service'' at Table 5.3.

[63] We include all toll-free number subscribers in this category, including those for 888 numbers.

[64] 13 CFR 121.201, NAICS code 517310.

[65] ''Trends in Telephone Service'' at Tables 18.4, 18.5, 18.6, and 18.7.

[66] 13 CFR 121.201, NAICS codes 517410 and 517910.

[67] U.S. Census Bureau, 2002 NAICS Definitions, ''517410 Satellite Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[68] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517410 (issued Nov. 2005).

[69] *Id.* An additional 38 firms had annual receipts of $25 million or more.

[70] U.S. Census Bureau, 2002 NAICS Definitions, ''517910 Other Telecommunications'' *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[71] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 4, NAICS code 517910 (issued Nov. 2005).

[72] *Id.* An additional 14 firms had annual receipts of $25 million or more.

[73] 13 CFR 121.201, NAICS code 517211.

[74] 13 CFR 121.201, NAICS code 517212.

[75] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517211 (issued Nov. 2005).

[76] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the

this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[77] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[78] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

68. Internet Service Providers. The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' [79] Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less.[80] According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year.[81] Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999.[82] Thus, under this size standard, the great majority of firms can be considered small entities.

69. Cellular Licensees. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [83] and ''Cellular and Other Wireless Telecommunications.'' [84] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[85] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[86] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[87] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[88] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

70. Common Carrier Paging. As noted, the SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' [89] Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, U.S. Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year.[90] Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[91] Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

71. In addition, in the Paging Second Report and Order, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[92] 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.[93] The SBA has approved this definition.[94] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold.[95] Fifty-seven companies claiming small business status won 440 licenses.[96] An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[97] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.[98] Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent ''Trends in Telephone Service'', 408 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services.[99] Of these, we estimate that 589 are small, under the SBA-approved small business size standard.[100] We estimate that the majority of common carrier paging

largest category provided is for firms with ''1000 employees or more.''

[77] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517212 (issued Nov. 2005).

[78] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[79] Office of Management and Budget, North American Industry Classification System, page 515 (1997). NAICS code 518111, ''On-Line Information Services.''

[80] 13 CFR 121.201, NAICS code 518111.

[81] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[82] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 4, Receipts Size of Firms Subject to Federal Income Tax: 1997, NAICS code 514191 (issued October 2000).

[83] 13 CFR 121.201, NAICS code 517211.

[84] 13 CFR 121.201, NAICS code 517212.

[85] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517211 (issued Nov. 2005).

[86] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[87] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 517212 (issued Nov. 2005).

[88] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[89] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[90] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000).

[91] U.S. Census Bureau, 1997 Economic Census, Subject Series: ''Information,'' Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1000 employees or more.''

[92] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811–2812, paras. 178–181 (*Paging Second Report and Order*); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085–10088, paras. 98–107 (1999).

[93] *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

[94] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, from Aida Alvarez, Administrator, Small Business Administration, dated Dec. 2, 1998.

[95] *See* ''929 and 931 MHz Paging Auction Closes,'' *Public Notice*, 15 FCC Rcd 4858 (WTB 2000).

[96] *See* ''929 and 931 MHz Paging Auction Closes,'' *Public Notice*, 15 FCC Rcd 4858 (WTB 2000).

[97] *See* ''Lower and Upper Paging Band Auction Closes,'' *Public Notice*, 16 FCC Rcd 21821 (WTB 2002).

[98] *See* ''Lower and Upper Paging Bands Auction Closes,'' *Public Notice*, 18 FCC Rcd 11154 (WTB 2003).

[99] ''Trends in Telephone Service'' at Table 5.3.

[100] 13 CFR 121.201, NAICS code 517211.

providers would qualify as small entities under the SBA definition.

72. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years.[101] The SBA has approved these definitions.[102] The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

73. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[103] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[104] According to ''Trends in Telephone Service'' data, 437 carriers reported that they were engaged in wireless telephony.[105] We have estimated that 260 of these are small under the SBA small business size standard.

74. Broadband Personal Communications Service. The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has created a small business size standard for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[106] For Block F, an additional small business size standard 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.[107] These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.[108] 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.[109] On March 23, 1999, the Commission reauctioned 155 C, D, E, and F Block licenses; there were 113 small business winning bidders.[110]

75. 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.[111] 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. On February 15, 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction No. 58. There were 24 winning bidders for 217 licenses.[112] Of the 24 winning bidders, 16 claimed small business status and won 156 licenses.

76. Narrowband Personal Communications Services. The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less.[113] Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses.[114] To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order.[115] 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.[116] 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.[117] The SBA has approved these small business size standards.[118] A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses.[119] Three of these claimed status as a small or very small entity and won 311 licenses.

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[101] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[102] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[103] 13 CFR 121.201, NAICS code 517212.

[104] 13 CFR 121.201, NAICS code 517212.

[105] ''Trends in Telephone Service'' at Table 5.3.

[106] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7850–7852, paras. 57–60 (1996); see also 47 CFR § 24.720(b).

[107] *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, 7852, para. 60.

[108] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Dec. 2, 1998).

[109] FCC News, ''Broadband PCS, D, E and F Block Auction Closes,'' No. 71744 (rel. Jan. 14, 1997).

[110] *See* ''C, D, E, and F Block Broadband PCS Auction Closes,'' *Public Notice*, 14 FCC Rcd 6688 (WTB 1999).

[111] *See* ''C and F Block Broadband PCS Auction Closes; Winning Bidders Announced,'' *Public Notice*, 16 FCC Rcd 2339 (2001).

[112] *See* ''Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58,'' *Public Notice*, 20 FCC Rcd 3703 (2005).

[113] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding Narrowband PCS*, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196, para. 46 (1994).

[114] *See* ''Announcing the High Bidders in the Auction of ten Nationwide Narrowband PCS Licenses, Winning Bids Total $617,006,674,'' *Public Notice*, PNWL 94–004 (rel. Aug. 2, 1994); ''Announcing the High Bidders in the Auction of 30 Regional Narrowband PCS Licenses; Winning Bids Total $490,901,787,'' *Public Notice*, PNWL 94–27 (rel. Nov. 9, 1994).

[115] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[116] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[117] *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, Second Report and Order and Second Further Notice of Proposed Rule Making, 15 FCC Rcd 10456, 10476, para. 40 (2000).

[118] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Dec. 2, 1998.

[119] *See* ''Narrowband PCS Auction Closes,'' *Public Notice*, 16 FCC Rcd 18663 (WTB 2001).

77. Lower 700 MHz Band Licenses. We adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[120] We have defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[121] A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[122] Additionally, the lower 700 MHz Service has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is ''entrepreneur,'' which is defined as 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.[123] The SBA has approved these small size standards.[124] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[125] A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.[126] Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[127] On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

78. Upper 700 MHz Band Licenses. The Commission released a Report and Order, authorizing service in the upper 700 MHz band.[128] This auction, previously scheduled for January 13, 2003, has been postponed.[129]

79. 700 MHz Guard Band Licenses. In the 700 MHz Guard Band Order, we adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[130] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[131] 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 $15 million for the preceding three years.[132] SBA approval of these definitions is not required.[133] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[134] 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.[135]

80. Specialized Mobile Radio. The Commission awards ''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.[136] The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years.[137] The SBA has approved these small business size standards for the 900 MHz Service.[138] The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.[139] A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.[140]

81. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800

[120] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, Report and Order, 17 FCC Rcd 1022 (2002).

[121] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, Report and Order, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[122] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, Report and Order, 17 FCC Rcd 1022, 1087–88, para. 172 (2002).

[123] *See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, Report and Order, 17 FCC Rcd 1022, 1088, para. 173 (2002).

[124] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999.

[125] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

[126] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[127] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

[128] *Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, Second Memorandum Opinion and Order, 16 FCC Rcd 1239 (2001).

[129] *See* ''Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,'' *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

[130] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299 (2000).

[131] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299, 5343, para. 108 (2000).

[132] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299, 5343, para. 108 (2000).

[133] *See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules,* Second Report and Order, 15 FCC Rcd 5299, 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

[134] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[135] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[136] 47 CFR 90.814(b)(1).

[137] 47 CFR 90.814(b)(1).

[138] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Aug. 10, 1999. We note that, although a request was also sent to the SBA requesting approval for the small business size standard for 800 MHz, approval is still pending.

[139] *See* ''Correction to Public Notice DA 96–586 'FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,' '' *Public Notice,* 18 FCC Rcd 18367 (WTB 1996).

[140] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (WTB 2002).

MHz SMR band qualified as small businesses under the $15 million size standard.[141] In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[142] Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

82. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR 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. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

83. 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 definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons.[143] The Commission estimates that most such licensees are small businesses under the SBA's small business standard. For census data on these entities, see paragraph 65, *supra.*

84. 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, we adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[144] This small business 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.[145] A ''very small business'' is defined as 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.[146] The SBA has approved these small size standards.[147] Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[148] 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.[149] Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.[150] A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.[151]

85. Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, ''Cellular and Other Wireless Telecommunications.'' This definition provides that a small entity is any such entity employing no more than 1,500 persons.[152] The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.[153]

86. The Commission's 1994 Annual Report on PLMRs [154] indicates that at the end of fiscal year 1994, there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that the revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

87. Fixed Microwave Services. Fixed microwave services include common carrier,[155] private operational-fixed,[156] and broadcast auxiliary radio services.[157] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in

[141] *See* ''800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 17162 (2000).

[142] *See* ''800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 1736 (2000).

[143] 13 CFR 121.201, NAICS code 517212.

[144] *Amendment of Part 90 of the Commission's Rules to Provide For the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service,* Third Report and Order, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997).

[145] *Id.* at 11068, paras. 291.

[146] *Id.*

[147] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA, (Jan. 6, 1998).

[148] *See generally* ''220 MHz Service Auction Closes,'' *Public Notice,* 14 FCC Rcd 605 (1998).

[149] *See* ''FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made,'' *Public Notice,* 14 FCC Rcd 1085 (1999).

[150] *See* ''Phase II 220 MHz Service Spectrum Auction Closes,'' *Public Notice,* 14 FCC Rcd 11218 (1999).

[151] *See* ''Multi-Radio Service Auction Closes,'' *Public Notice,* 17 FCC Rcd 1446 (2002).

[152] *See* 13 CFR 121.201, NAICS code 517212.

[153] *See generally* 13 CFR 121.201.

[154] Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at para. 116.

[155] *See* 47 CFR 101 et seq. (formerly, Part 21 of the Commission's Rules) for common carrier fixed microwave services (except Multipoint Distribution Service).

[156] Persons eligible under parts 80 and 90 of the Commission's Rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[157] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

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.[158] The Commission does not have data specifying the number of these licensees that have no 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 22,015 or fewer common carrier fixed licensees and 61,670 or fewer 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 proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

88. 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.[159] 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.[160] The SBA has approved these small business size standards.[161] 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.

89. Local Multipoint Distribution Service. Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.[162] The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[163] An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[164] The SBA has approved these small business size standards in the context of LMDS auctions.[165] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small business winning that won 119 licenses.

90. 218–219 MHz Service. The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs).[166] Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, we defined a small business as 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.[167] In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we defined 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 exceeding $15 million for the preceding three years.[168] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years.[169] The SBA has approved of these definitions.[170] A subsequent auction is not yet scheduled. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this analysis that in future auctions, many, and perhaps most, of the licenses may be awarded to small businesses.

91. Location and Monitoring Service (LMS). Multilateration LMS systems use non-voice radio techniques to determine the location and status of mobile radio units. For purposes of auctioning LMS licenses, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[171] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $3 million.[172] These definitions have been approved by the SBA.[173] An auction for LMS licenses commenced on February 23, 1999, and closed on March 5, 1999. Of the 528

[158] 13 CFR 121.201, NAICS code 517212.

[159] *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands, ET Docket No. 95–183,* Report and Order, 12 FCC Rcd 18600 (1997).

[160] *Id.*

[161] *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998); *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Hector Barreto, Administrator, SBA, (Jan. 18, 2002).

[162] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[163] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[164] *See Rulemaking to Amend Parts 1, 2, 21, 25, of the Commission's Rules to Redesignate the 27.5–29.5 GHz Frequency Band, Reallocate the 29.5–30.5 Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services,* Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rule Making, 12 FCC Rcd 12545, 12689–90, para. 348 (1997).

[165] *See* Letter to Dan Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998).

[166] *See* ''Interactive Video and Data Service (IVDS) Applications Accepted for Filing,'' *Public Notice,* 9 FCC Rcd 6227 (1994).

[167] *Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Fourth Report and Order, 9 FCC Rcd 2330 (1994).

[168] *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218–219 MHz Service,* Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999).

[169] *Id.*

[170] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA, (Jan. 6, 1998).

[171] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd 15182, 15192 para. 20 (1998); *see also* 47 CFR 90.1103.

[172] *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems,* Second Report and Order, 13 FCC Rcd at 15192, para. 20; *see also* 47 CFR 90.1103.

[173] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated Feb. 22, 1999.

licenses auctioned, 289 licenses were sold to four small businesses.

92. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.[174] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).[175] In the present context, we will use 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.[176] 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 proposed herein.

93. Air-Ground Radiotelephone Service.[177] We have previously used the SBA's small business definition applicable to ''Cellular and Other Wireless Telecommunications,'' i.e., an entity employing no more than 1,500 persons.[178] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purpose of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million.[179] A ''very small business'' is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million.[180] These definitions were approved by the SBA.[181] In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Service licenses. Neither of the winning bidders claimed small business status.

94. 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, we will use the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees.[182] 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 our evaluations in this analysis, we estimate 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 dollars.[183] 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.

95. Offshore Radiotelephone Service. This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.[184] There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services.[185] Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.[186]

96. Multiple Address Systems (MAS). Entities using MAS spectrum, in general, fall into two categories: (1) Those using the spectrum for profit-based uses, and (2) those using the spectrum for private internal uses. With respect to the first category, the Commission defines ''small entity'' for MAS licenses as an entity that has average gross revenues of less than $15 million in the three previous calendar years.[187] ''Very small business'' is defined as an entity that, together with its affiliates, has average gross revenues of not more than $3 million for the preceding three calendar years.[188] The SBA has approved of these definitions.[189] The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service. In addition, an auction for 5,104 MAS licenses in 176 EAs began November 14, 2001, and closed on November 27, 2001.[190] Seven winning bidders claimed status as small or very small businesses and won 611

[174] The service is defined in section 22.99 of the Commission's Rules, 47 CFR 22.99.

[175] BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

[176] 13 CFR 121.201, NAICS code 517212.

[177] The service is defined in 22.99 of the Commission's Rules, 47 CFR 22.99.

[178] 13 CFR 121.201, NAICS codes 517212.

[179] *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service, WT Docket Nos. 03–103 and 05–42,* Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28–42 (2005).

[180] *Id.*

[181] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated September 19, 2005.

[182] 13 CFR 121.201, NAICS code 517212.

[183] *Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[184] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

[185] 13 CFR 121.201, NAICS code 517212.

[186] *Id.*

[187] *See Amendment of the Commission's Rules Regarding Multiple Address Systems,* Report and Order, 15 FCC Rcd 11956, 12008, para. 123 (2000).

[188] *Id.*

[189] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA, (June 4, 1999).

[190] *See* ''Multiple Address Systems Spectrum Auction Closes,'' *Public Notice,* 16 FCC Rcd 21011 (2001).

licenses. On May 18, 2005, the Commission completed an auction (Auction No. 59) of 4,226 Multiple Address Systems (MAS) licenses in the Fixed Microwave Services from the 928/959 and 932/941 MHz bands. Twenty-six winning bidders won a total of 2,323 licenses. Of the 26 winning bidders in this auction, five claimed small business status and won 1,891 licenses.

97. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. For the majority of private internal users, the small business size standard developed by the SBA would be more appropriate. The applicable size standard in this instance appears to be that of ''Cellular and Other Wireless Telecommunications''. This definition provides that a small entity is any such entity employing no more than 1,500 persons.[191] The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

98. Incumbent 24 GHz 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.[192] For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[193] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[194] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[195] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[196] Thus, under this second category and size standard, the majority of firms can, again, be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent [197] and TRW, Inc. It is our understanding that Teligent and its related companies have fewer 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.

99. Future 24 GHz Licensees. With respect to new applicants in the 24 GHz band, we have defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million.[198] ''Very small business'' in the 24 GHz band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years.[199] The SBA has approved these definitions.[200] The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

100. Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service. Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS).[201] In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[202] The SBA has approved of this standard.[203] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[204] Of the 67 auction winners, 61 claimed status as a small business. At this time, we estimate 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. In addition, hundreds of ''pre-auction stations'' were licensed to incumbent MDS licensees prior to implementation of 309(j) of the Commissions Act of 1934, 47 U.S.C. 309(j).

101. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution,[205] which includes all such companies generating $12.5 million or less in annual receipts.[206] 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

[191] *See* 13 CFR 121.201, NAICS code 517212.

[192] 13 CFR 121.201, NAICS code 517212.

[193] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

[194] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[195] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[196] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[197] Teligent acquired the DEMS licenses of FirstMark, the only licensee other than TRW in the 24 GHz band whose license has been modified to require relocation to the 24 GHz band.

[198] *Amendments to Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz,* Report and Order, 15 FCC Rcd 16934, 16967, para. 77 (2000) (24 GHz Report and Order); *see also* 47 CFR 101.538(a)(2).

[199] *24 GHz Report and Order,* 15 FCC Rcd at 16967, para. 77; *see also* 47 CFR 101.538(a)(1).

[200] *See* Letter to Margaret W. Wiener, Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary M. Jackson, Assistant Administrator, SBA, (July 28, 2000).

[201] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995) (*MDS Auction R&O*).

[202] 47 CFR 21.961(b)(1).

[203] *See* Letter to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Gary Jackson, Assistant Administrator for Size Standards, SBA, (March 20, 2003) (noting approval of $40 million size standard for MDS auction).

[204] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See MDS Auction R&O*, 10 FCC Rcd at 9608, para. 34 (1995).

[205] 13 CFR 121.201, NAICS code 517510.

[206] *Id.*

consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' [207] 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.[208] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[209] 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.[210] Thus, under this size standard, the majority of firms can be considered small.

102. Finally, concerning ITFS, we note that educational institutions are included in this analysis as small entities.[211] There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, we tentatively conclude that at least 1,932 ITFS licensees are small businesses.

103. Television Broadcasting. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in broadcasting images together with sound. These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public.''[212] The SBA has created a small business size standard for Television Broadcasting entities, which is: Such firms having $13 million or less in annual receipts.[213] According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 (twelve) million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [214] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

104. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

105. There are also 2,117 low power television stations (LPTV).[215] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the above SBA small business size standard.

106. Radio Broadcasting. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business.[216] Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.''[217] According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [218] are included.[219] Our estimate, therefore likely overstates the number of small businesses that might be affected by our action.

107. Auxiliary, Special Broadcast and Other Program Distribution Services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[220]

108. The Commission estimates that there are approximately 3,868 FM translators and boosters.[221] The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($6.5 million for a radio station or $13.0 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a ''small business concern'' because they are not independently owned and operated.[222]

109. 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

[207] U.S. Census Bureau, 2002 NAICS Definitions, ''517510 Cable and Other Program Distribution''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[208] 13 CFR 121.201, NAICS code 517510.

[209] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[210] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[211] In addition, the term ''small entity'' under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. 601(4)–(6). We do not collect annual revenue data on ITFS licensees.

[212] U.S. Census Bureau, 2002 NAICS Definitions, ''515120 Television Broadcasting'' (partial definition); *http://www.census.gov/epcd/naics02/def/NDEF515.HTM.*

[213] 13 CFR 121.201, NAICS code 515120.

[214] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 21.103(a)(1).

[215] *FCC News Release,* ''Broadcast Station Totals as of September 30, 2005.''

[216] *See* OMB, North American Industry Classification System: United States, 1997, at 509 (1997) (Radio Stations) (NAICS code 515112).

[217] *Id.*

[218] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[219] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121(a)(4).

[220] 13 CFR 121.201, NAICS codes 513111 and 513112.

[221] FCC News Release, ''Broadcast Station Totals as of September 30, 2004.''

[222] 15 U.S.C. 632.

consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.''[223] 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.[224] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[225] 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.[226] Thus, under this size standard, the majority of firms can be considered small.

110. 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.[227] Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.[228] In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers.[229] 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.[230] Thus, under this second size standard, most cable systems are small.

111. 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.''[231] 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.[232] Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard.[233] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million,[234] and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

112. Open Video Services. Open Video Service (OVS) systems provide subscription services.[235] The SBA has created a small business size standard for Cable and Other Program Distribution.[236] This standard provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.[237] Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, D.C., 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 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies proposed herein.

113. Cable Television Relay Service. This service includes transmitters generally used to relay cable programming within cable television system distribution systems. 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.[238] According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year.[239] 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.[240] Thus, under this size standard, the majority of firms can be considered small.

114. Multichannel Video Distribution and Data Service. MVDDS is a terrestrial fixed microwave service operating in the 12.2–12.7 GHz band. The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. It defined a very small business as an entity with average annual gross revenues not exceeding $3 million for the preceding three years; a small business as an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and an entrepreneur as an entity with average annual gross revenues not exceeding $40 million for the preceding three years.[241] These definitions were approved by the SBA.[242] On January 27,

[223] U.S. Census Bureau, 2002 NAICS Definitions, ''517510 Cable and Other Program Distribution''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM.*

[224] 13 CFR 121.201, NAICS code 517510.

[225] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[226] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[227] 47 CFR 76.901(e). The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

[228] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006*, ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006*, ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[229] 47 CFR 76.901(c).

[230] Warren Communications News, *Television & Cable Factbook 2006*, ''U.S. Cable Systems by Subscriber Size,'' page F–2 (data current as of Oct. 2005). The data do not include 718 systems for which classifying data were not available.

[231] 47 U.S.C. 543(m)(2); *see* 47 CFR 76.901(f) & nn. 1–3.

[232] 47 CFR 76.901(f); *see* Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator,* DA 01–158 (Cable Services Bureau, Jan. 24, 2001)

[233] These data are derived from: R.R. Bowker, *Broadcasting & Cable Yearbook 2006,* ''Top 25 Cable/Satellite Operators,'' pages A–8 & C–2 (data current as of June 30, 2005); Warren Communications News, *Television & Cable Factbook 2006,* ''Ownership of Cable Systems in the United States,'' pages D–1805 to D–1857.

[234] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 CFR 76.909(b).

[235] *See* 47 U.S.C. 573.

[236] 13 CFR 121.201, NAICS code 517510.

[237] *See http://www.fcc.gov/csb/ovs/csovscer.html* (current as of March 2002).

[238] 13 CFR 121.201, NAICS code 517510.

[239] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

[240] *Id.* An additional 61 firms had annual receipts of $25 million or more.

[241] *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range; Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Boradcast Satellite Licenses and their Affiliates; and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to provide A Fixed Service in the 12.2–12.7 GHz Band, ET Docket No. 98–206, Memorandum Opinion and Order and Second Report and Order,* 17 FCC Rcd 9614, 9711 para. 252 (2002).

[242] *See* Letter from Hector V. Barreto, Administrator, U.S. Small Business Administration, to Margaret W. Wiener, Chief, Auctions and

Continued

2004, the Commission completed an auction of 214 MVDDS licenses (Auction No. 53). In this auction, ten winning bidders won a total of 192 MVDDS licenses.[243] Eight of the ten winning bidders claimed small business status and won 144 of the licenses. The Commission also held an auction of MVDDS licenses on December 7, 2005 (Auction 63). Of the three winning bidders who won 22 licenses, two winning bidders, winning 21 of the licenses, claimed small business status.[244]

115. Amateur Radio Service. These licensees are held by individuals in a noncommercial capacity; these licensees are not small entities.

116. Aviation and Marine 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.[245] 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 our evaluations in this analysis, we estimate 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 dollars.[246] 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.

117. Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The Personal Radio Services include spectrum licensed under Part 95 of our rules.[247] These services include Citizen Band Radio Service (CB), General Mobile Radio Service (GMRS), Radio Control Radio Service (R/C), Family Radio Service (FRS), Wireless Medical Telemetry Service (WMTS), Medical Implant Communications Service (MICS), Low Power Radio Service (LPRS), and Multi-Use Radio Service (MURS).[248] There are a variety of methods used to license the spectrum in these rule parts, from licensing by rule, to conditioning operation on successful completion of a required test, to site-based licensing, to geographic area licensing. Under the RFA, the Commission is required to make a determination of which small entities are directly affected by the rules being proposed. Since all such entities are wireless, we apply the definition of cellular and other wireless telecommunications, pursuant to which a small entity is defined as employing 1,500 or fewer persons.[249] Many of the licensees in these services are individuals, and thus are not small entities. In addition, due to the mostly unlicensed and shared nature of the spectrum utilized in many of these services, the Commission lacks direct information upon which to base an estimation of the number of small entities under an SBA definition that might be directly affected by the proposed rules.

118. Public Safety Radio Services. Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[250] There are a total of approximately 127,540 licensees in these services. Governmental entities [251] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[252]

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

119. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 Remittance Advice, and pay a regulatory fee based on the number of licenses or call signs.[253] Interstate telephone

Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, dated February 13, 2002.

[243] *See* ''Multichannel Video Distribution and Data Service Auction Closes,'' Public Notice, 19 FCC Rcd 1834 (2004).

[244] *See* ''Auction of Multichannel Video Distribution and Data Service Licenses Closes; Winning Bidders Announced for Auction No. 63,'' *Public Notice,* 20 FCC Rcd 19807 (2005).

[245] 13 CFR 121.201, NAICS code 517212.

[246] *Amendment of the Commission's Rules Concerning Maritime Communications,* Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[247] 47 CFR Part 90.

[248] The Citizens Band Radio Service, General Mobile Radio Service, Radio Control Radio Service, Family Radio Service, Wireless Medical Telemetry Service, Medical Implant Communications Service, Low Power Radio Service, and Multi-Use Radio Service are governed by Subpart D, Subpart A, Subpart C, Subpart B, Subpart H, Subpart I, Subpart G, and Subpart J, respectively, of Part 95 of the Commission's rules. *See generally* 47 CFR Part 95.

[249] 13 CFR 121.201, NAICS Code 517212.

[250] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's Rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[251] 47 CFR 1.1162.

[252] 5 U.S.C. 601(5).

[253] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (e.g., Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations,

service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499-A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

120. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

121. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[254] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[255] Further, in accordance with the Debt Collection Improvement Act of 1996 (DCIA), Public Law 194–134, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[256] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the DCIA. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[257]

122. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[258] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

123. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (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.[259] In the *NPRM*, we have sought comment on alternatives that might simplify our fee procedures or otherwise benefit filers, including small entities, while remaining consistent with our statutory responsibilities in this proceeding.

124. The Omnibus Appropriations Act for FY 2007, Public Law 109–383, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to Section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2007.[260] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

125. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 253, *supra*. Also, waiver procedures provide regulatees, including small entity regulatees, relief in exceptional circumstances. See Section IV, *supra.*

VI. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

126. None.

Attachment B—Sources of Payment Unit Estimates for FY 2007

In order to calculate individual service fees for FY 2007, we adjusted FY 2006 payment units for each service to more accurately reflect expected FY 2007 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireline Competition Bureau's *Trends in* Telephone *Service* and the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.*

We tried to obtain verification for these estimates from multiple sources and, in all cases; we compared FY 2007 estimates with actual FY 2006 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2007 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to

remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[254] 47 CFR 1.1164.

[255] 47 CFR 1.1164(c).

[256] Public Law 104–134, 110 Stat. 1321 (1996).

[257] 31 U.S.C. 7701(c)(2)(B).

[258] 47 CFR 1.1166.

[259] 5 U.S.C. 603.

[260] 47 U.S.C. 159(a).

economic, technical or other reasons. Therefore, when we note, for example, that our estimated FY 2007 payment units are based on FY 2006 actual payment units, it does not necessarily mean that our FY 2007 projection is exactly the same number as FY 2006. It means that we have either rounded the FY 2007 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz, Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee databases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau reports.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau Competition Report findings.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
UHF/VHF Television Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on CDBS data, adjusted for exemptions, and actual FY 2006 payment units.
Broadcast Auxiliaries	Based on actual FY 2006 payment units.
BRS (formerly MDS/MMDS)	Based on Wireless Telecommunications Bureau reports and actual FY 2006 payment units.
Cable Television Relay Service (CARS) Stations.	Based on data from Media Bureau's COALS database and actual FY 2006 payment units.
Cable Television System Subscribers	Based on publicly available data sources for estimated subscriber counts and actual FY 2006 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2006 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2007 revenue growth/decline for industry, and projections by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau reports and actual FY 2006 payment units.
Space Stations (GSOs & NGSOs)	Based on International Bureau reports and actual FY 2006 payment units.
International Bearer Circuits	Based on International Bureau reports and actual FY 2006 payment units.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau reports and actual FY 2006 payment units.

ATTACHMENT C—CALCULATION OF FY 2007 REVENUE REQUIREMENTS AND PRO-RATA FEES

Fee category	FY 2007 payment units	Years	FY 2006 revenue estimate	Pro-rated FY 2007 revenue requirement [261]	Computed new FY 2007 regulatory fee	Rounded new FY 2007 regulatory fee	Expected FY 2007 revenue
PLMRS (Exclusive Use)	1,250	10	440,000	426,300	34	35	437,500
PLMRS (Shared use)	15,500	10	2,500,000	2,422,162	16	15	2,325,000
Microwave	4,350	10	1,700,000	1,647,070	38	40	1,740,000
218–219 MHz (Formerly IVDS)	3	10	1,650	1,599	53	55	1,650
Marine (Ship)	8,000	10	800,000	775,092	10	10	800,000
GMRS	16,000	5	425,000	411,768	5	5	400,000
Aviation (Aircraft)	8,800	10	300,000	290,659	3	5	440,000
Marine (Coast)	360	10	120,000	116,264	32	30	108,000
Aviation (Ground)	1,650	10	150,000	145,330	9	10	165,000
Amateur Vanity Call Signs	14,700	10	177,116	171,601	1.17	1.17	171,990
AM Class A	68	1	217,350	210,428	3,095	3,100	210,800
AM Class B	1,567	1	2,619,500	2,534,141	1,617	1,625	2,546,375
AM Class C	937	1	921,500	890,541	950	950	890,150
AM Class D	1,705	1	3,095,750	2,994,982	1,757	1,750	2,983,750
FM Classes A, B1 & C3	3,027	1	6,519,500	6,311,615	2,085	2,075	6,281,025
FM Classes B, C, C0, C1 & C2	3,002	1	7,924,300	7,675,996	2,557	2,550	7,655,100
AM Construction Permits	65	1	37,525	26,003	400	400	26,000
FM Construction Permits [262]	205	1	115,000	117,898	575	575	117,875
Satellite TV	125	1	141,450	137,046	1,096	1,100	137,500
Satellite TV Construction Permit	3	1	1,710	1,657	552	550	1,650
VHF Markets 1–10	43	1	2,850,100	2,765,285	64,309	64,300	2,764,900
VHF Markets 11–25	61	1	2,914,275	2,827,462	46,352	46,350	2,827,350
VHF Markets 26–50	77	1	2,465,625	2,392,781	31,075	31,075	2,392,775
VHF Markets 51–100	115	1	2,372,200	2,300,839	20,007	20,000	2,300,000
VHF Remaining Markets	198	1	1,045,200	1,012,657	5,114	5,125	1,014,750
VHF Construction Permits	3	1	30,600	15,377	5,126	5,125	15,375
UHF Markets 1–10	91	1	1,846,750	1,787,645	19,644	19,650	1,788,150
UHF Markets 11–25	76	1	1,528,000	1,478,819	19,458	19,450	1,478,200
UHF Markets 26–50	115	1	1,284,075	1,242,489	10,804	10,800	1,242,000
UHF Markets 51–100	168	1	1,092,000	1,056,977	6,292	6,300	1,058,400
UHF Remaining Markets	183	1	331,925	321,590	1,757	1,750	320,250

ATTACHMENT C—CALCULATION OF FY 2007 REVENUE REQUIREMENTS AND PRO-RATA FEES—Continued

Fee category	FY 2007 payment units	Years	FY 2006 revenue estimate	Pro-rated FY 2007 revenue requirement [261]	Computed new FY 2007 regulatory fee	Rounded new FY 2007 regulatory fee	Expected FY 2007 revenue
UHF Construction Permits [1]	22	1	33,725	38,517	1,751	1,750	38,500
Broadcast Auxiliaries	27,000	1	240,000	232,528	9	10	270,000
LPTV/Trans-lators/Boosters/Class A TV	3,400	1	1,218,000	1,180,077	347	345	1,173,000
CARS Stations	780	1	148,750	144,119	185	185	144,300
Cable TV Systems	64,500,000	1	49,770,000	48,220,399	0.74760	0.75	48,375,000
Interstate Tele-communication Service Providers	51,000,000,000	1	140,184,000	135,819,336	0.00266312	0.00266	135,660,000
CMRS Mobile Services (Cellular/Public Mobile)	229,000,000	1	42,000,000	40,596,052	0.177	0.18	41,220,000
CMRS Messaging Services	7,500,000	1	520,000	600,077	0.08	0.08	600,000
BRS	1,300	1	485,925	425,139	327	325	422,500
LMDS	410	1	90,750	134,077	327	325	133,250
International Bearer Circuits	6,500,000	1	7,791,000	7,548,425	1.16	1.16	7,540,000
International Public Fixed	1	1	1,925	1,865	1,865	1,875	1,875
Earth Stations	3,900	1	752,500	729,071	187	185	721,500
International HF Broadcast	5	1	4,100	3,972	794	795	3,975
Space Stations (Geostationary)	86	1	9,693,975	9,392,151	109,211	109,200	9,391,200
Space Stations (Non-Geostationary	6	1	721,350	698,891	116,482	116,475	698,850
****** Total Estimated Revenue to be Collected			299,624,101	290,274,768			291,035,465
****** Total Revenue Requirement			298,771,000	290,295,160			290,295,160
Difference			853,101	(20,392)			740,305

ATTACHMENT D—PROPOSED FY 2007 SCHEDULE OF REGULATORY FEES

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	35
Microwave (per license) (47 CFR part 101)	40
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	55
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	30
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	15
PLMRS (Shared Use) (per license) (47 CFR part 90)	15
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.17
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.18
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Broadband Radio Service (formerly MMDS/ MDS) (per license) (47 CFR part 21)	325
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	325
AM Radio Construction Permits	400
FM Radio Construction Permits	575
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	64,300
Markets 11–25	46,350
Markets 26–50	31,075
Markets 51–100	20,000

[261] -0.028369018 factor applied based on the amount Congress designated for recovery through regulatory fees (Pub. L. 109–108 and 47 U.S.C. 159(a)(2)).

[262] The AM and FM Construction Permit revenues and the VHF and UHF Construction Permit revenues were adjusted to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service.

ATTACHMENT D—PROPOSED FY 2007 SCHEDULE OF REGULATORY FEES—Continued

Fee category	Annual regulatory fee (U.S. $'s)
Remaining Markets	5,125
Construction Permits	5,125
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	19,650
Markets 11–25	19,450
Markets 26–50	10,800
Markets 51–100	6,300
Remaining Markets	1,750
Construction Permits	1,750
Satellite Television Stations (All Markets)	1,100
Construction Permits—Satellite Television Stations	550
Low Power TV, Class A TV, TV/FM Translators & Boosters (47 CFR part 74)	345
Broadcast Auxiliaries (47 CFR part 74)	10
CARS (47 CFR part 78)	185
Cable Television Systems (per subscriber) (47 CFR part 76)	.75
Interstate Telecommunication Service Providers (per revenue dollar)	.00266
Earth Stations (47 CFR part 25)	185
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100)	109,200
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	116,475
International Bearer Circuits (per active 64KB circuit)	1.16
International Public Fixed (per call sign) (47 CFR part 23)	1,875
International (HF) Broadcast (47 CFR part 73)	795

FY 2007 Schedule of Regulatory Fees (continued)

FY 2007 RADIO STATION REGULATORY FEES

Population Served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	625	475	400	475	575	725
25,001—75,000	1,225	925	600	725	1,150	1,250
75,001—150,000	1,825	1,150	800	1,200	1,600	2,300
150,001—500,000	2,750	1,950	1,200	1,425	2,475	3,000
500,001—1,200,000	3,950	2,975	2,000	2,375	3,900	4,400
1,200,001—3,000,00	6,075	4,575	3,000	3,800	6,350	7,025
≤3,000,000	7,275	5,475	3,800	4,750	8,075	9,125

Attachment E—Factors, Measurements and Calculations That Go Into Determining Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in § § 73.150 and 73.152 of the Commission's rules.[263] Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3 [264]. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with

[263] 47 CFR 73.150 and 73.152.

[264] *See Map of Estimated Effective Ground Conductivity in the United States*, 47 CFR 73.190 Figure R3.

the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials.[265] The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

Attachment F—FY 2006 Schedule of Regulatory Fees

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	20
Microwave (per license) (47 CFR part 101)	85
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	55
Marine (Ship) (per station) (47 CFR part 80)	10
Marine (Coast) (per license) (47 CFR part 80)	20
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10
PLMRS (Shared Use) (per license) (47 CFR part 90)	10
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	10
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	2.08
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.20
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08
Multipoint Distribution Services (MMDS/MDS) (per license sign) (47 CFR part 21)	275
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	275
AM Radio Construction Permits	395
FM Radio Construction Permits	575
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	64,775
Markets 11–25	47,775
Markets 26–50	32,875
Markets 51–100	20,450
Remaining Markets	5,025
Construction Permits	3,400
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	20,750
Markets 11–25	19,100
Markets 26–50	10,975
Markets 51–100	6,500
Remaining Markets	1,775
Construction Permits	1,775
Satellite Television Stations (All Markets)	1,150
Construction Permits—Satellite Television Stations	570
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	420
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	175
Cable Television Systems (per subscriber) (47 CFR part 76)	.79
Interstate Telecommunication Service Providers (per revenue dollar)	.00264
Earth Stations (47 CFR part 25)	215
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	111,425
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	120,225
International Bearer Circuits (per active 64KB circuit)	1.47
International Public Fixed (per call sign) (47 CFR part 23)	1,925
International (HF) Broadcast (47 CFR part 73)	820

FY 2006 Schedule of Regulatory Fees (continued)

FY 2006 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	625	500	400	475	575	750
25,001–75,000	1,225	950	600	725	1,150	1,325
75,001–150,000	1,850	1,200	800	1,200	1,575	2,450
150,001–500,000	2,775	2,025	1,200	1,425	2,450	3,200

[265] 47 CFR 73.313.

FY 2006 RADIO STATION REGULATORY FEES—Continued

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
500,001–1,200,000	4,000	3,100	2,000	2,375	3,875	4,700
1,200,001–3,000,00	6,150	4,750	3,000	3,800	6,325	7,500
≤3,000,000	7,375	5,700	3,800	4,750	8,050	9,750

[FR Doc. E7–8366 Filed 5–1–07; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 06–150; CC Docket No. 94–102; WT Docket No. 01–309; WT Docket No. 03–264; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86; FCC No. 07–72]

Service Rules for the 698–806 MHz Band and Revision of the Commission's Rules Regarding Enhanced 911 Emergency Calling Systems, Hearing Aid-Compatible Telephones, and Public Safety Spectrum Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this Further Notice of Proposed Rulemaking (FNPRM), the Federal Communications Commission (FCC) seeks comment on rules governing wireless licenses in the 698–806 MHz Band (*i.e.*, the 700 MHz Band). This spectrum is currently occupied by television broadcasters and is being made available for wireless services, including public safety and commercial services, as a result of the digital television (''DTV'') transition.

DATES: Comments due on or before May 23, 2007 and reply comments are due on or before May 30, 2007. Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746–806 MHz Band are not subject to certain sections of the Paperwork Reduction Act.[1] The Commission is therefore not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

ADDRESSES: You may submit comments, identified by WT Docket No. 06–150; CC Docket No. 94–102; WT Docket No. 01–309; WT Docket No. 03–264; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86, by any of the following methods:

<bullet≤ Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

<bullet≤ Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.

<bullet≤ E-mail: Include the docket numbers in the subject line of the message.

<bullet≤ 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: Paul Moon at (202) 418–1793, *paul.moon@fcc.gov*, Mobility Division, Wireless Telecommunications Bureau; Paul D'Ari at (202) 418–1550, *paul.d'ari@fcc.gov*, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau; John Evanoff at (202) 418–0848, *john.evanoff@fcc.gov*, Public Safety and Homeland Security Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM), WT Docket No. 06–150; CC Docket No. 94–102; WT Docket No. 01–309; WT Docket No. 03–264; WT Docket No. 06–169; PS Docket No. 06–229; WT Docket No. 96–86, FCC No. 07–72, adopted April 25, 2007 and released April 27, 2007. The full text of the FNPRM is available for public inspection on the Commission's Internet site at *http://www.fcc.gov*. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 30 days after date of publication in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, we have assessed the potential effects of the various proposals with regard to information collection burdens on small business concerns, and find that there are no results specific to businesses with fewer than 25 employees. The Commission notes, however, that Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 746–806 MHz Band become effective immediately upon publication in the **Federal Register** without regard to

[1] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Section 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)–(B).

certain sections of the Paperwork Reduction Act.[2] The Commission, therefore, is not inviting comment on any information collections that concern frequencies in the 746–806 MHz Band.

Synopsis

1. In the Further Notice of Proposed Rulemaking (FNPRM), the FCC reaches tentative conclusions and makes proposals with respect to a limited number of key issues affecting licensing, service and technical rules for the 698–806 MHz Band (*i.e.*, the 700 MHz Band). In addition, the FCC seeks comment on the ''Public Safety Broadband Deployment Plan'' proposal submitted by Frontline Wireless, LLC (Frontline). In seeking additional comment in this FNPRM, the FCC intends to rely on the extensive record that has already been developed in the three pending 700 MHz Band proceedings to inform its ultimate decisions.

2. In addition to the recently filed Frontline proposal, the three pending 700 MHz Band proceedings are: (1) The 700 MHz Commercial Services proceeding,[3] (2) the 700 MHz Guard Bands proceeding,[4] and (3) the 700 MHz Public Safety proceeding.[5] Because decisions on certain issues in the three proceedings are potentially interrelated, the FCC chooses to address them jointly in the FNPRM. In so doing, the FCC seeks to promote access to 700 MHz Band spectrum and the provision of service to consumers across the country, including in rural areas, as well as opportunities for broadband service for public safety users.

1. 700 MHz Band Commercial Services

A. Lower 700 MHz Band

3. In the existing band plan for the Lower 700 MHz Band, the 48 megahertz of spectrum is divided into five blocks: three 12-megahertz paired blocks, each consisting of two 6-megahertz segments (Blocks A, B, and C); and two 6-megahertz unpaired blocks (Blocks D and E). The FCC proposes not to alter the spectrum blocks as currently sized and aligned. The spectrum comprising Lower 700 MHz Band Blocks C and D, consisting of 18 of the 48 megahertz in that band, has already been auctioned, and the remainder of the Lower 700 MHz Band is subject to a statutorily imposed auction schedule. The FCC also notes that a number of parties support retaining the current size of spectrum blocks in the Lower 700 MHz Band, including Blocks C and D of that Band. The FCC therefore proposes not to change the bandwidth of this licensed spectrum, but seeks further comment on this proposal.

4. The FCC also proposes that the unpaired spectrum in the E Block of the Lower 700 MHz Band remain over larger regional areas, licensed on an REAG basis. As the FCC has found before with respect to the 700 MHz band and to the AWS–1 band, and as supported by several commenters in this record, licenses based on large geographic areas offer certain benefits, such as allowing licensees to more easily take advantage of economies of scale to develop new technologies and services. The FCC seeks comment on whether this proposal would serve the public interest.

5. The FCC also proposes to adopt EAs as the geographic area for licenses in the A Block in the Lower 700 MHz Band. The FCC makes this proposal because there is significant support in the record for a mix of licenses, including EA licenses. Given the potential public interest benefits of placing one additional spectrum block over small geographic service areas (in addition to the B Block of the Lower 700 MHz Band), while also retaining significant portions of spectrum licenses in large geographic areas, the FCC seeks comment on whether it would serve the public interest to license the A Block across EAs.

6. In addition, the FCC proposes that CMAs be adopted as the geographic service area for licenses in the B Block of the Lower 700 MHz Band, which results in the availability of 734 CMA licenses in this block as opposed to 6 EAG licenses. In seeking comment on this proposal, the FCC notes that certain commenters specifically favor the B Block for reassignment on the basis of CMAs. The FCC also notes that, if it assigns CMAs in the Lower 700 MHz Band B Block, licensees will be afforded the opportunity to combine the B Block licenses with licenses in the adjacent C Block, which already have been licensed over CMAs (Metropolitan Statistical Areas and Rural Service Areas (MSAs/RSAs)). Accordingly, the FCC seeks comment on whether converting the B Block to CMA licensing could create opportunities for existing licensees in the C Block of the Lower 700 MHz Band, many of which include small or rural service providers, to create a larger block by acquiring another similarly sized spectrum block in the auction.

B. Upper 700 MHz Band Commercial Services Band

7. The following proposals would make several changes to the size and location of the spectrum blocks in the band plan currently associated with the Upper 700 MHz Commercial Services Band and the 700 MHz Guard Bands, as well as the geographic area basis on which the various blocks should be licensed. The FCC considers these changes in large part because it is tentatively concluding to consolidate the proposed broadband portion of the 700 MHz Public Safety Band at the lower portion of the Public Safety spectrum, as discussed below, while consolidating narrowband operations to the upper portion of the Public Safety spectrum. If the FCC adopts such a proposal, the adjacency of Public Safety broadband spectrum to commercial broadband spectrum in the Upper 700 MHz Band may make it possible to make adjustments to the Guard Bands spectrum, rendering additional spectrum available for commercial use. Under one scenario, the existing Guard Band B block would be eliminated entirely, and the spectrum subsumed within the commercial spectrum in the Upper 700 MHz Band, resulting in a total of 34 megahertz available for auction. Under another scenario, the Guard Band B Block would be reduced from four to two megahertz, and the location of both the Guard Band A and B blocks would be shifted within the Upper 700 MHz Band. The FCC discusses the proposals below on this basis.

(i) Proposals Based on Elimination of the Guard Band B Block

8. *Elimination of the Guard Band B Block.* As noted, adoption of the FCC's

[2] *Id.*

[3] *See* Service Rules for the 698–749, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, and Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 9345 (2006).

[4] *See* Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06–169 and 96–86, *Notice of Proposed Rule Making*, 21 FCC Rcd 10413 (2006).

[5] *See* Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket 06–229, WT Docket No. 96–86, *Ninth Notice of Proposed Rule Making*, 21 FCC Rcd 14837 (2006); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, *Eighth Notice of Proposed Rulemaking*, WT Docket Nos. 96–86 and 05–157, 21 FCC Rcd 3668 (2006).

proposal to consolidate the broadband Public Safety spectrum in the lower portion of the 700 MHz Public Safety Band may mean that the four megahertz of spectrum in the existing Guard Band B Block is no longer needed for use as a guard band for the adjacent 700 MHz public safety users, and may be consolidated with the rest of the commercial spectrum for more efficient and effective use. The following proposals would reconfigure the band plan associated with the 30 megahertz of commercial spectrum in the Upper 700 MHz Commercial Services Band and the four megahertz of commercial spectrum in the 700 MHz Guard Band B Block, providing 34 megahertz of commercial spectrum in the Upper 700 MHz Band available for auction throughout most of the nation. These proposals also contemplate the creation of a 12 megahertz paired block of commercial spectrum (758–764 MHz/788–794 MHz) adjacent to the 700 MHz Public Safety Band (hereinafter the ''adjacent block'').

9. In addition to providing additional spectrum for wireless broadband services, the new adjacent block could help facilitate the transition to wireless broadband for public safety in its 700 MHz spectrum. Under these proposals, the adjacent block auction winner(s) would have to pay the costs of consolidating the 700 MHz Public Safety spectrum with the narrowband allocation at the upper end and the broadband allocation at the lower end. The FCC seeks comment on whether the adjacent block auction winner(s) should, as a license condition, be required to post a letter of credit or place certain funds in escrow to ensure the availability of funds to fulfill this obligation. The FCC also seeks comment on how to establish the amount and mechanism for implementing such an obligation. For example, how should the FCC assess the responsibility for relocating public safety operations if there are multiple adjacent block auction winners?

10. As mentioned above, the FCC currently holds 42 of the 52 Guard Band B Block licenses. These proposals would grandfather the remaining B Block licenses by allowing them to continue to operate in this spectrum under current rules. The FCC seeks comment on whether it should permit existing Guard Band B Block licensees to operate pursuant to the current technical specifications for the Guard Band B Block, which contemplate that Guard Band B Block licensees operate high-site, high-power communications. The FCC seeks comment on whether there would be potential for harmful interference to new, co-channel adjacent block licensees, or to public safety broadband operations, if the FCC adopts its proposals for the 700 MHz Public Safety spectrum. Similarly, if the FCC eliminates the existing Guard Band B block, resulting in a 12-megahertz 700 MHz commercial block immediately adjacent to the 700 MHz Public Safety block, the FCC seeks comment on whether any technical or operational restrictions or limitations would need to be adopted to protect against interference to the proposed broadband public safety operations.

11. In addition, the FCC seeks comment on whether it could facilitate clearing of the existing Guard Band B Block licensees by allowing the incumbents to include their licenses in the auction inventory in a ''two-sided'' auction, which would make available licenses currently held by incumbent Guard Band B Block licensees. Commenters should address details of how the existing licenses could be incorporated into the auction, and how the incumbent licensees could be compensated for ''selling'' a license. Are there other ways we should consider transitioning the existing Guard Band B Block licensees to the proposed band plan?

12. The FCC notes that a reconfiguration of the band plan for the 700 MHz Public Safety Band, as discussed below, may result in the relocated narrowband channels being blocked by existing Canadian TV broadcasters in certain border areas. Although the Canadian government has agreed to clear broadcasters from TV channels 63 and 68, there is as yet no such agreement for TV channels 64 and 69, where the narrowband channels would rest in their entirety after the proposed band plan reconfiguration. As a temporary solution to this problem, the FCC is also seeking comment below in this FNPRM on whether to allow, in border areas, narrowband voice communications within the 1 megahertz internal guard band that is designed (under a band reconfiguration) to protect the narrowband channels from the proposed broadband channels. The result of this option would be a corresponding loss of available spectrum for broadband communications, since a 1 megahertz internal guard band would still be necessary to protect the shifted narrowband channels from public safety broadband operations.

13. As a result, under these proposals, the FCC would impose a license condition upon the adjacent block licensee, creating a temporary easement into the adjacent block to facilitate the full 5 megahertz bandwidth of the proposed public safety broadband allocation under a band reconfiguration. This easement would terminate upon transition of the border broadcast operations and the subsequent transition of any relevant public safety users operating on the easement. The FCC also seeks comment on whether this easement should be triggered in all adjacent block licenses that share a border with Canada or Mexico, within each licensee's entire service area or within the portion that is within range of the conflicting broadcaster's service contour. In such a circumstance, should the adjacent block licensee be allowed to operate on a secondary basis within the easement spectrum, or not at all? Finally, the FCC seeks comment on whether we have the authority to impose this license condition on new adjacent block licensees.

14. *Proposal 1*. In the first proposal, the FCC would establish a new 22-megahertz C Block (comprised of two 11-megahertz blocks of paired spectrum), and a new 12-megahertz D Block (comprised of two 6-megahertz blocks of paired spectrum). Both the C and D Blocks in the Upper 700 MHz Band would be licensed on a REAG basis.

15. Creating a paired, 22-megahertz block of spectrum in a newly configured C Block would be responsive to the desires of some potential new entrants, as well as many other commenters who favored a large 20 megahertz block of spectrum in the Upper 700 MHz Band. For example, the Coalition for 4G in America has specifically advocated that we adopt a paired, 22-megahertz license in the Upper 700 MHz Band to support new entry. Under this proposal, licensees could purchase licenses in these contiguous blocks to create 34-megahertz licenses, which could provide unique opportunities to offer broadband services. Further, with regard to the larger 22-megahertz C Block REAG licenses, the FCC proposes, consistent with the desires expressed by the Coalition for 4G America, to auction this block on a combinatorial basis, which would further facilitate the aggregation of licenses at auction to create a nationwide footprint. The FCC seeks comment on this proposal.

16. *Proposal 2*. This proposed band plan contemplates licensing 34 megahertz of commercial spectrum in the Upper 700 MHz Band using a mix of REAG, EA and CMA geographic licensing areas. In conjunction with the proposed mix of geographic licensing areas in the Lower 700 MHz Band, this proposal seeks to approximate the balanced mix of geographic licensing

sizes adopted by the FCC in the recent AWS–1 auction. It is intended to provide opportunities for small providers in rural areas, as well as new entrants seeking to establish a nationwide wireless footprint, and to afford bidders flexibility to aggregate smaller markets to create either a nationwide market, or large regional or other customized markets.

17. Specifically, this proposal would create two 11-megahertz licenses (each composed of two 5.5-megahertz paired blocks)—the C and D blocks—and a 12-megahertz E block (composed of two 6-megahertz paired blocks) similar to the block that is the subject of the Frontline proposal discussed below. Under this proposal, the FCC would license the C and D Blocks both on an EA basis, or the C Block on a CMA basis and the D Block on an EA basis. The FCC would license the E Block on a REAG basis. This band plan is not tied to adoption of either the Broadband Optimization Plan or the recently filed alternative plan. The FCC seeks specific comment on whether this proposal provides interested bidders with the flexibility to aggregate smaller markets to create either a nationwide market, large regional or other customized markets, as advocated by a broad array of parties. Also, the FCC seeks comment as to whether this band plan would offer some potential new entrants an opportunity to provide broadband services. Finally, the FCC seeks comment on whether to consider licensing these spectrum blocks set forth in this proposal on a different geographic basis.

(ii) Proposals Based on Modified 700 MHz Guard Bands

18. *Modification of the 700 MHz Guard Bands*. The following three proposals are premised on: 1) a shift of the Guard Band A Block from 746–747/776–777 MHz to 762–763/792–793 MHz; 2) a reduction of the Guard Band B Block from 4 megahertz to 2 megahertz; and 3) a shift of the Guard Band B Block from 762–764/792–794 MHz to 775–776 MHz/805–806 MHz. These actions would make 32 megahertz of spectrum in the Upper 700 MHz Band (746–762 MHz/776–792 MHz) available for commercial licensing.

19. *Proposal 3*. Access Spectrum/Pegasus have submitted an alternative proposal to the Commission for modification of the Guard Bands in the Upper 700 MHz Band, which could also impact the configuration of the Upper 700 MHz Band. According to Access Spectrum/Pegasus, its alternative plan would permit the auction of 32 megahertz of commercial broadband spectrum but leave the size of the public safety allocation unchanged. They also argue that it would accommodate the consolidation of the public safety narrowband spectrum by addressing the Canadian interference issues and public safety relocation costs, discussed above. Finally, by proposing an 11 megahertz block immediately adjacent to the Lower 700 MHz C Block, Access Spectrum/Pegasus assert that the alternative proposal addresses interference concerns on the record by moving the Guard Band A Block.

20. Access Spectrum/Pegasus propose to ''shift'' down the 700 MHz Public Safety Band by 1 megahertz to remedy potential narrowband interference issues with Canada and Mexico, if the FCC determines that a consolidation of the narrowband channels to the top of the public safety allocation is in the public interest. In implementing the ''shift,'' the current A Block at 746–747 MHz and 776–777 MHz would be displaced and relocated, and the Upper 700 MHz C Block would become a 22-megahertz block (comprised of two 11-megahertz paired blocks) through redistribution of a total of 2 megahertz of current B Block spectrum. According to Access Spectrum/Pegasus, a 22-megahertz C Block would address potential interference concerns and would be responsive to record support for an 11-megahertz paired block. The alternative plan proposes that the D Block would be a 10-megahertz block, (comprised of two 5-megahertz paired blocks) and that the newly configured A Block would be reduced from a total of 4 megahertz to 2 megahertz. In addition, with the displacement of the A Block, Access Spectrum/Pegasus propose that the FCC modify the licenses of the incumbent A Block licensees, essentially ''repacking'' the newly configured A Block with all current A and B Block licensees.

21. Access Spectrum/Pegasus propose to work with the FCC to ensure that all current A Block and B Block licensees can be accommodated in the newly configured A Block. Subject to certain conditions, Access Spectrum/Pegasus would also agree to pay for the transition of public safety narrowband operations in the band. Their proposed conditions include: (a) the newly configured A Block sharing the same service rules as the Upper 700 MHz C and D Blocks, including application of our Secondary Markets rules; and (b) the Commission removing the cellular architecture restrictions on the newly configured A Block.

22. The FCC seeks comment on Access Spectrum/Pegasus' alternative proposal and its likely effects on both the commercial and public safety users in the 700 MHz Band. The FCC also seeks comment on whether, and to what extent, the Commission should: (a) Adopt certain, but not all, elements of the Access Spectrum/Pegasus alternative proposal; (b) modify any elements of the proposal, adopt any additional requirements, or adopt any alternative requirements to achieve the same or similar public interest goals; and (c) consider alternative approaches to encourage public-private partnerships for sharing spectrum between public safety users and commercial licensees in the 700 MHz Band.

23. The Access Spectrum/Pegasus proposal to shift down the public safety block by 1 megahertz would result in the overlap of public safety spectrum onto 1 megahertz of each pair of the current Guard Bands B Block licenses, including licenses that are currently encumbered in certain areas of the country. As a proposed solution to this problem, Access Spectrum/Pegasus offers to work with the FCC and the current Guard Bands B Block licensees to repack all of the current Guard Bands licensees into the newly configured A Block. The FCC notes that, in addition to Access Spectrum/Pegasus, two other current Guard Bands B Block license holders, PTPMS II and Harbor Guard Band, LLC, have indicated that they will work with the Commission to develop a plan that treats each party fairly. The FCC seeks comment on the extent to which it may rely on these private negotiations to resolve the spectrum overlap problem. The FCC is concerned that, if all incumbent Guard Bands licensees do not come to an agreement consistent with Access Spectrum/Pegasus' alternative proposal, public safety and commercial operations in areas with incumbent B Block licensees would be significantly curtailed. The FCC tentatively concludes that the Commission should reject Access Spectrum/Pegasus' alternative proposal if the incumbent licensees are unable to come to an agreement.

24. *Proposal 4*. If the FCC determines that it is able to modify the Upper 700 MHz Guard Bands in the manner proposed by Access Spectrum/Pegasus in connection with their alternative band plan proposal, it seeks comment on other options the Commission may take. For example, the FCC seeks specific comment on a band plan composed of a mix of REAG and EA geographic licensing areas for the Upper 700 MHz Band. In conjunction with the tentative conclusion regarding the mix of geographic licensing areas in the Lower 700 MHz Band, this band plan closely approximates the balanced mix of geographic licensing sizes adopted by

the Commission in the recent AWS auction. This band plan will provide opportunities for small providers in rural areas, as well as new entrants seeking to establish a nationwide wireless footprint.

25. Specifically, this band plan proposes to license the C and D Blocks as two separate 11-megahertz licenses (each composed of two 5.5-megahertz paired blocks) on a REAG basis, with an E Block similar to the block that is the subject of the Frontline proposal discussed below licensed as a 10-megahertz license (composed of paired 5-megahertz blocks) on an EA basis. The FCC seeks specific comment on whether this proposal regarding the C and D Blocks will provide interested bidders with an opportunity to combine the two blocks into a single 22-megahertz license, which some potential new entrants have suggested would provide unique opportunities to provide broadband services. The FCC also seeks specific comment on whether one or both of the C and D Blocks should be auctioned on a combinatorial basis in order to further facilitate the aggregation of a nationwide footprint, and if so, how this should be accomplished.

26. In addition, the FCC proposes that if the Commission were to adopt the Frontline proposal discussed below (effectively treating the E block as a single national geographic license), it would license the D Block on an EA basis (and maintain the C Block on a REAG basis) in order to maintain a balanced mix of geographic license sizes. The FCC seeks comment on this proposal.

27. *Proposal 5.* Finally, the FCC seeks comment on an additional alternative proposal that assumes that we modify the guard bands. As set out below, under this band plan the FCC would license the C and D blocks as two 11-megahertz licenses (each composed of two 5.5-megahertz paired blocks), with a 10-megahertz E Block (composed of paired 5-megahertz block). The C Block would be licensed on a REAG basis, and the D and E Blocks would be licensed on an EA basis.

28. A number of parties have argued that a more flexible Upper 700 MHz band plan that includes a mix of licenses could better support a variety of business plans and ensures that the spectrum is made available to the bidders that value it most. There is a concern that a band plan with only REAGs in the Upper 700 MHz Band may artificially favor only the largest wireless incumbents or particular business models. These principles have been supported by a large number of commenters including large wireless providers, tribal governments, state regulators, and a large coalition of wireless providers.[6] These principles reflect the Commission's statutory obligation to ensure ''an equitable distribution of licenses and services among geographic areas'' and to ''avoid [ ] excessive concentration of licenses * * * by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' [7]

29. The above band plan takes into account these several positions by providing for a mix of REAGs and EAs in the upper band plan based in part on the 700 MHz guard band and public safety spectrum restructuring advocated by Access Spectrum and Pegasus. By splitting the larger 22-megahertz block into two 11-megahertz blocks, the FCC increases the opportunity for all providers to actively participate in the auction. The FCC also would allow for combinatorial bidding on the C Block to facilitate the ability of entities to secure a national license. The FCC seeks comment on the merits of this proposal and on the specific areas selected for the blocks: two EAs and one REAG. Parties are also encouraged to comment on possible changes to this band plan in the event the FCC adopts a proposal similar to the one advanced by Frontline. Finally, the FCC seeks comment on the impact of this band plan on potential new entrants, some of which have argued that a larger 22-megahertz block is critical for their market entry business plans.

C. Performance Requirements

30. Given the numerous and competing arguments offered by commenters, and considering the importance of rules that promote access to spectrum and the provision of service, the FCC seeks further comment on the performance requirements for the 700 MHz Commercial Services licensees. As the basis for its consideration, the FCC proposes to combine performance requirements based on geographic benchmarks and a ''keep what you use'' rule. Specifically, the FCC proposes that each licensee provide coverage of 25 percent of the geographic area of the license within three years of the grant of the initial license, 50 percent of this area within five years, and 75 percent of the area within eight years. The FCC seeks comment on this proposal, including its advantages and disadvantages. To the extent commenters believe these proposed benchmarks should be higher or lower, the FCC requests that they provide information that would corroborate the benefits of their proposed benchmarks and the costs and benefits of alternative approaches. Comments should address whether these specific geographic benchmarks would promote access to spectrum and the provision of service.

31. The FCC also proposes to consider the relevant service area to exclude all government land. Under this approach, a licensee with a geographic service area that includes land owned or leased by government would be able to meet the build-out benchmarks by employing a signal level that is sufficient to provide service to the relevant percentages of land in the service area that is not owned or leased by government. If a licensee employs a signal level that provides coverage to land that is owned or leased by government, the FCC seeks comment on whether the licensee could count this land area and coverage as part of its service area for purposes of measuring compliance with the performance benchmark. Similarly, the FCC seeks comment on whether it should adopt a ''keep what you use'' standard that also excludes those portions of the licensed areas that encompass land owned or leased by government. In particular, the Commission asks how a ''keep what you use'' rule that excluded government land would be applied in areas, such as Alaska, in which vast portions of the state or region include such land.

32. The FCC also seeks comment on the potential consequences for licensees that fail to meet the interim requirements to cover a minimum percentage of the geographic area of their license area. For example, licensees that fail to meet these benchmarks could have the length of their license term reduced. Alternatively, licensees that fail to meet the benchmarks could have their license area reduced under a proportionate ''keep what you use'' approach. Under this alternative, the reduction of the license area would be sufficient to create a resulting license area in which the area currently covered meets the relevant interim benchmark. For example, if a licensee employs a signal level sufficient to provide service to only 20 percent of the geographic area by the three-year benchmark, the licensee would be required to return a portion of the licensee's unserved area to the Commission, so that the covered area equals at least 25 percent of the remaining portion of the license area. A

[6] Balanced Consensus Plan Comments in WT Docket No. 06–150 at Attachment.

[7] 47 U.S.C. 309(j)(3).

similar process would be used if a licensee fails to meet the five- and eight-year benchmarks.

33. The FCC also seeks comment on how it might apply a ''keep what you use'' rule to this proposal. In particular, the FCC asks whether it should apply such a standard to all of the licensees for the unauctioned 700 MHz Band Commercial Services or only to those licensees that fail to meet their geographic benchmarks. For example, the FCC could apply the ''keep what you use'' rule at the end of the license term, regardless of the level of construction by the licensee. Alternatively, licensees that fail to meet the 75 percent geographic area coverage requirement could be subject to a ''keep what you use'' rule applied either at the 8-year benchmark or at the end of the license term, while licensees that meet the 8-year benchmark could be exempt from a ''keep what you use'' rule.

34. In addition, the FCC asks commenters to address the process by which it should reclaim unused spectrum under a ''keep what you use'' rule, and specifically, how such spectrum should be made available to new users. For example, the FCC seeks comment on whether parties that hold licenses for other spectrum in the same geographic area should be eligible to acquire the unused spectrum of another licensee after the Commission reclaims this spectrum and makes it available via competitive bidding. Similarly, the FCC seeks comment on whether the initial licensee should be eligible to bid on spectrum that it previously held as part of its original license. For both these alternatives, the FCC asks that commenters address how a particular policy would help promote service to the unserved area and whether there would be a risk of negative effects, such as a loss of potential competition.

35. The FCC also proposes to apply its performance requirements on an EA and CMA basis only. Under such an approach, licensees with REAGs would be required to employ a signal level sufficient to provide adequate service to at least 25 percent of the geographic area of each EA in its license area within three years, 50 percent of the geographic area of each of these EAs within five years, and 75 percent of the geographic area of each of these EAs within eight years. REAG licensees that fail to meet the interim requirement in any EA within their license areas would lose a portion of the geographic area of that EA, such that the coverage of the remaining portion of the EA would be sufficient to meet the relevant benchmark.

36. The FCC proposes that licensees demonstrate their compliance with benchmarks by filing maps and other supporting documents with the Commission. Would such information be sufficient to provide the FCC with easily identified areas, which could be reclaimed and reassigned via competitive bidding under a ''keep what you use'' approach? The FCC also asks for comment on whether it should reclaim the spectrum in unused areas in pre-defined units, such as counties. Those commenters that recommend a county-based ''keep what you use'' standard also should provide recommendations on how the FCC should apply this standard in the event a licensee serves only a small portion of a county, such as a highway or an area that is adjacent to a county that has more coverage by the licensee. The FCC seeks comment on these alternatives.

37. In addition, assuming licensees with REAGs are required to meet the performance requirements on an EA basis, the FCC proposes that these licensees would have to demonstrate coverage for each EA within their license area. Licenses based on EAs or CMAs would have to demonstrate coverage for their respective geographic license areas.

38. Finally, the FCC seeks comment on any other proposal that would similarly apply build-out requirements to these licensees more stringent than the substantial service standard applied under our current rules, and on how such proposals could be implemented. For example, should the FCC use population rather than geographic benchmarks?

D. Incumbent Eligibility

39. The FCC also seeks comment on the proposal presented by Media Access Project and the Ad Hoc Public Interest Spectrum Coalition (PISC) to encourage the entry of new competitors by excluding incumbent local exchange carriers (ILECs), incumbent cable operators, and large wireless carriers from eligibility for licenses in the 700 MHz Band. In the alternative, PISC suggests that these incumbents only be eligible for licenses in the 700 MHz band through structurally separate affiliates, which it contends would make it possible to detect whether the incumbent receives more favorable treatment than unaffiliated providers. The FCC also seeks comment on whether it should encourage the entry of new broadband competitors through lesser restrictions on eligibility for obtaining new licenses, both at auction and in the secondary market. More particularly, it seeks comment on whether only parties not affiliated with existing wireline broadband service providers, including both DSL and cable providers, should be eligible to hold one or more blocks of the Upper 700 MHz C Block spectrum. Alternatively, should the FCC restrict eligibility for the Upper 700 MHz C Block licenses to parties not affiliated with in-region wireline broadband service providers? Finally, as an alternative to limiting the parties eligible for new licenses in the 700 MHz Band, the FCC seeks comment on whether parties unaffiliated with incumbent wireline broadband service providers should receive a bidding credit on licenses in the Upper 700 MHz C Block. The FCC also seeks comment on how such new entrant bidding credits should be coordinated with existing bidding credits for small businesses, *i.e.*, should new entrant credits be cumulative or exclusive of small business bidding credits.

2. 700 MHz Guard Bands

A. Band Plan Proposals

40. The FCC tentatively concludes that it will not adopt the Broadband Optimization Plan (BOP), or other proposals, to the extent that they propose a reallocation of commercial spectrum for public safety use, or the reassignment of spectrum outside of the competitive bidding process. The FCC believes that Congress's express instructions regarding the allocation of commercial and public safety spectrum in the 700 MHz Band statutorily prohibits it from reallocating this spectrum at this time, and it therefore cannot reallocate commercial spectrum for public safety use as proposed by the BOP and other plans. Similarly, the FCC believes that it is required to use a competitive bidding process to assign the spectrum that has been allocated for commercial use pursuant to these statutory instructions, and therefore must also deny the BOP and the critical infrastructure industries (CII) proposals on this basis. Even if the FCC possessed legal authority to adopt the BOP and CII proposals, the FCC believes these proposals are not in the public interest because they would assign additional spectrum to current licensees without competitive bidding. The FCC is also concerned that the BOP could result in interference between 700 MHz Band public safety and commercial operations.

41. In Section 337(a) of the Communications Act, Congress mandated that the FCC allocate ''spectrum between 746 MHz and 806 MHz, inclusive'' (*i.e.*, the Upper 700 MHz Band) by designating 24 megahertz

of the spectrum ''for public safety services'' and 36 megahertz of the spectrum ''for commercial use to be assigned by competitive bidding pursuant to Section 309(j).'' As directed by Congress, the FCC allocated 24 megahertz of this spectrum for public safety use at 764–776 MHz and 794–806 MHz and 36 megahertz of this spectrum for commercial use at 746–764 MHz and 776–794 MHz. The 36 megahertz of Upper 700 MHz Band spectrum allocated for commercial use included the Guard Bands. The FCC finds that the reallocation of commercial spectrum to public safety contemplated by the various Guard Bands proposals—in particular, the BOP, the Ericsson plan, and the revised Alcatel-Lucent plan—would appear to be inconsistent with Section 337. Even if Section 337(a) does not establish a permanent legislative bar on reallocating the Upper 700 MHz Band, the FCC believes that it would be contrary to Congress' intent in enacting Section 337 to consider modifying the commercial and public safety allocations in the band before the licensees have had a meaningful opportunity to use unencumbered spectrum as initially envisioned (an opportunity that is unlikely to be fully available before the end of the DTV transition in 2009).

42. In accordance with Section 337's mandate that commercial spectrum in the 700 MHz Band be assigned by competitive bidding, the FCC established a licensing framework providing that mutually exclusive applications in this band would be subject to competitive bidding pursuant to Section 309(j) of the Act. This licensing scheme resulted in two auctions of the Guard Band licenses. The FCC finds that it lacks legal authority to assign to proponents of the BOP, or CII, additional commercial spectrum in the Upper 700 MHz Band absent competitive bidding, because any such action would be inconsistent with the auction requirements in Sections 337(a). Section 337(a)(2) prescribes competitive bidding as the method of assigning commercial spectrum in the Upper 700 MHz Band. The FCC finds that for the same reasons that it cannot reallocate the band at this time, it cannot alter the method of assignment at this time.

43. The FCC also believes that the BOP proposal for assigning licenses outside the competitive bidding process would not serve the public interest. The FCC seeks comment on its public policy concerns and any similar policy concerns, including its assessment that license assignment by auction is preferable to license assignment by private negotiation or other non-auction methods. The FCC also seeks comment on potential interference concerns, including the possibility that operations in the proposed internal public safety guard band could be undertaken by public safety licensees. In addition, the FCC seeks comment on the possibility that a C Block licensee might have to limit emissions at the lower portion of its authorized spectrum block in some manner, which could limit its ability to fully utilize its block and thereby limit service offerings.

44. *Access Spectrum/Pegasus Alternative Proposal.* Acknowledging potential legal concerns with the BOP, especially with respect to the proposed reallocation of spectrum from commercial use to public safety services, Access Spectrum/Pegasus have submitted an alternative proposal to the Commission for modification of the Guard Bands in the Upper 700 MHz Band, which is discussed in detail above. In addition to the FCC's discussion of this proposal above, it notes its tentative conclusion above that Section 337 and the public interest weigh against awarding 700 MHz spectrum outside of the competitive bidding process at this time. The FCC also notes, however, that Access Spectrum/Pegasus do not seek any additional spectrum in their alternative proposal, but instead seek to have the FCC modify their 1 megahertz paired A Block license to specify operations in a new 1 megahertz paired A Block license at different frequencies. The FCC seeks comment on whether the alternative proposal sufficiently addresses Section 337 and public interest concerns regarding the assignment of spectrum outside of the competitive bidding process. The FCC also seeks comment on whether the licensed geographic areas in the new A Block should be the same as in the current A Block.

B. Other Guard Band Issues

45. The FCC seeks further, limited comment on what it should do if it decides to leave the existing Guard Bands substantially intact. For example, assuming the FCC modifies the public safety allocation, the B Block's role as a critical juncture between adjacent commercial and public safety broadband spectrum would potentially be enhanced. After a reconfiguration of the public safety allocation, the B Block would rest between large commercial and public safety spectrum blocks, both of which are well-suited for broadband communications. In that context, the FCC could provide incumbent B Block licensees, as well as future licensees via auction, greater technical and operational flexibility than currently exists by revising its rules regarding restrictions on cellular architectures, and mandating low-site, low-power system architectures. Such initiatives could afford B Block licensees the previously unavailable potential to offer compatible broadband services within their paired 2 megahertz of spectrum, thereby creating additional opportunities for efficient and effective use of the spectrum. These opportunities could include entering into public/private partnerships with the adjacent public safety broadband operator(s), partnering with other commercial licensees to deploy commercial broadband systems, and attracting a broader pool of potential leasing partners interested in deploying broadband.

46. Because the FCC is committed to resolving the issues raised in this FNPRM on an expedited basis, the Commission notes that if it were to retain the existing band plan, it could simultaneously require that the B Block licensees deploy low-site, low-power system architectures, and permit them to deploy cellular systems. At the same time, the FCC would likely request detailed comment on these and any additional prospects for enhancing the utility of the B Block in order to augment the record developed in response to the *700 MHz Guard Bands Notice.* The FCC seeks comment on these ideas, specifically whether the low-site, low-power system architecture requirement, together with removal of the restriction on cellular architectures, is a positive step toward enhancing the B Block should the Commission ultimately decide not to adopt any proposal to eliminate or substantially modify the Guard Band B Block.

47. The FCC also seeks comment on whether it should make changes to the A Block Guard Bands spectrum under the current band plan. For example, the FCC seeks seek comment on whether the technical flexibility it might allow for the B Block would also be possible in the A Block. Are low-site, low-power system architectures technically feasible for the upper Guard Bands A Block immediately adjacent to the Public Safety spectrum allocation? If not, would it nevertheless be useful to provide such flexibility for the lower Guard Bands A Block? With the lower A Block's proximity to both the Lower 700 MHz C Block and the Upper 700 MHz C Block, certain technical modifications might improve compatibilities in the band. The FCC also seeks comment on whether, similar to its discussion above for the Guard Bands B Block, there would be a public

interest benefit to allowing the current A Block licensees to include their spectrum in the auction inventory in a ''two-sided'' auction.

3. Competitive Bidding Procedures

48. The FCC seeks comment on whether it should use limited information (or ''anonymous bidding'') procedures in the upcoming auction of new 700 MHz licenses, in order to deter anticompetitive behavior that may be facilitated by the release of information on bidder interests and identities. Current competitive bidding rules permit withholding information on bidder interests and identities prior to the close of bidding. Accordingly, the FCC can make a final decision regarding the procedures for the auction as part of the regular pre-auction process. The FCC seeks comment here in light of the potential importance of this band with respect to competition in broadband services and in order to assess whether the use of anonymous bidding should be a factor in determining the final band plan for new 700 MHz licenses.

49. In prior auctions, the FCC has adopted procedures, contingent on pre-auction assessments of likely competition in the auction, for withholding public release until the close of the auction of: (1) Bidders' license selections on their short form applications and the amount of their upfront payments; and (2) the identities of bidders placing bids. In the context of those prior auctions, the FCC noted that there may be potential harms as well as benefits from publicly revealing all information during the auction process. In this proceeding, the Ad Hoc Public Interest Spectrum Coalition asserts that anonymous bidding for new 700 MHz licenses is critical to promoting competitive entry in wireless broadband. In contrast, United States Cellular Corporation contends that smaller auction participants need information about larger entities' bids during the auction and that smaller auction participants may encounter difficulties with financing, if the FCC withholds the information during the auction.

50. The FCC seeks comment on the balance of potential harms and potential benefits from releasing information on bidder identities and interests during the auction of new 700 MHz licenses. In recent auctions where the FCC has considered withholding information about bidder identities and interests during the auction, it has assessed likely competition in the auction and determined that, given the anticipated level of competition, the benefits of releasing the information outweighed the potential harms. However, if the potential harms of releasing the information are substantial enough, or the potential benefits of releasing the information so slight, it may be appropriate to withhold the information regardless of the likely level of competition. For this auction, the FCC seeks comment on whether the potential to use new 700 MHz licenses to create alternatives to existing broadband networks increases the benefits from anonymous bidding by making it harder for existing providers to identify and impede the efforts of potential new entrants to win. Does the lack of readily available technologies for use in the band, relative to existing broadband networks in other bands, reduce the potential benefit of using bidders' identities to guess what technologies will be deployed? Given the potential harms and benefits from releasing information on bidder identities and interests during the auction of new 700 MHz licenses, should the Commission make its decision regarding the release of the information contingent on an assessment of likely competition? If so, should the Commission change how it makes its pre-auction assessment of likely competition?

51. The FCC also seeks comment on whether the potential use of anonymous bidding should be a factor in determining the final band plan. Would a band plan with a greater number of small licenses be more or less appropriate if bidders are able to bid anonymously for those licenses? Commenters should make clear what factors support their position on anonymous bidding, how these factors apply to this auction, and the extent to which these factors may depend upon the final band plan adopted. Commenters should address whether their views are dependent on whether the FCC conditions the implementation of such limits on a measure of the anticipated competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio.

4. 700 MHz Public Safety Spectrum

52. The FCC tentatively concludes to redesignate the public safety wideband spectrum for broadband use consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis. Further, should the FCC adopt this broadband approach, it tentatively concludes that the Commission should consolidate the existing narrowband allocations to the upper half of the 700 MHz Public Safety Band, and locate broadband communications in the lower half of this band. In addition, the FCC tentatively concludes that it should establish an internal guard band between the narrowband and broadband allocations. The FCC also seeks comment on a limited number of issues relating to use of the 700 MHz public safety spectrum, should it reallocate the wideband spectrum to broadband use.

A. Broadband

53. The current distribution of channels in the 700 MHz Public Safety Band includes a mix of narrowband and wideband channels. The FCC tentatively concludes that providing broadband spectrum for advanced public safety communications would best serve its goal of enabling first responders to protect safety of life, health and property. While some commenters argue that the FCC should continue to allow public safety entities the flexibility to deploy either wideband or broadband applications, the FCC tentatively concludes that providing such flexibility could hinder efforts to deploy a nationwide, interoperable broadband network by perpetuating a balkanization of public safety spectrum licenses, networks, and technology deployment. Further, only through use of broadband networks could public safety leverage advanced commercial technologies and infrastructure to reduce costs and speed deployment, and enable the potential for priority access to commercial networks during emergencies. Accordingly, the FCC believes that only broadband applications consistent with a nationwide interoperability standard should be deployed in the current wideband allocation of the 700 MHz Band. The FCC thus tentatively concludes to reallocate spectrum previously designated for wideband use to broadband use only, and prohibit wideband operations on a going forward basis. The FCC seeks comment on these tentative conclusions.

B. Band Plan Issues

54. Having tentatively concluded that only broadband applications consistent with a nationwide interoperability standard may be deployed in the current wideband allocation for public safety in the 700 MHz Band, the FCC seeks to take further steps to optimize the band plan for this spectrum, essentially building upon the public safety-related proposals in the BOP and the record developed pursuant to the *700 MHz Guard Bands Notice* and *700 MHz Public Safety Eighth Notice.* Specifically, the FCC tentatively concludes that, assuming it decides to adopt this broadband approach, it will consolidate the existing narrowband

allocations to the upper half of the 700 MHz Public Safety block, and will designate the lower half of the block for broadband operations. Additionally, it tentatively concludes that it will adopt a 1 megahertz internal guard band at the top of the resulting broadband allocation to buffer it from the narrowband allocation and thus prevent interference.

55. In addition, the FCC seeks comment on whether it should revise the out-of-band emission (OOBE) limit required for Upper 700 MHz Commercial Services Band base stations to protect public safety operations in the band if it adopts the tentative conclusions discussed above. In particular, the FCC seeks comment on whether it should replace the existing limit of 76 + 10 log P applicable to emissions into the 700 MHz Public Safety spectrum with the 43 + 10 log P OOBE standard that protects commercial services in the 700 MHz Band.

56. It also seeks comment on a limited number of related questions regarding: (1) Whether to allow limited use of the internal guard band in areas along the Canadian border to the extent that Canadian broadcasters cause interference to the relocated narrowband channels; (2) whether to adopt a transition plan, and what that plan should be; and (3) whether and how such transition should be funded.

C. Power Limits for Public Safety Broadband

57. The FCC has modified its power limit rules for the Upper and Lower 700 MHz Commercial Services Band by implementing a PSD model for defining power limits, permitting increased power in rural areas, and permitting radiated power levels to be measured on an average, rather than peak, basis. This action will permit higher power and increased flexibility for 700 MHz Commercial Services Band licensees implementing wider band technologies, with certain measures in place to protect against any possible increased interference, especially to 700 MHz public safety users.

58. The FCC also tentatively concludes to permit only broadband applications in the 700 MHz Public Safety Band consistent with a nationwide interoperability standard in the channels presently allocated for wideband. The FCC seeks comment on whether it is appropriate to provide the same flexibility to 700 MHz Public Safety broadband operations as that afforded 700 MHz Commercial Services Band licensees by implementing a PSD model for defining power limits, permitting increased power in rural areas, and permitting measurement of power levels on an average, versus peak, basis. The FCC also seeks comment on whether the technical restrictions adopted today for the 700 MHz Commercial Services Band with respect to interference protection, if applied to public safety broadband spectrum, will protect adjacent band operations.

5. Frontline's Proposal

59. The FCC seeks comment on Frontline's proposed ''Public Safety Broadband Deployment Plan'' and associated service rules. Under Frontline's proposal, the FCC would alter the upper portion of the Upper 700 MHz Commercial Services Band to designate a 10 megahertz ''E Block'' for a commercial licensee and impose specific conditions on that licensee requiring it to construct and operate a nationwide, interoperable broadband network for sharing with a national public safety licensee providing broadband service in the lower portion of the 700 MHz Public Safety spectrum. The ''E Block'' would consist of the paired 757–762 MHz and 787–792 MHz frequencies. The FCC also seeks comment on service rules proposed by Frontline.

60. With respect to the newly created ''E Block,'' Frontline proposes imposing the following obligations, among others, on this nationwide licensee:

61. The ''E Block'' licensee would be required to construct a common, interoperable network infrastructure that can be used by both the public safety broadband network and the ''E Block'' licensee's commercial network. The details of the network would be specified in a Network Sharing Agreement negotiated by the ''E Block'' licensee and the National Public Safety Licensee.

62. The ''E Block'' licensee would be required to provide coverage to 75 percent of the United States population within four years of the 700 MHz ''auction clearing date''; provide coverage to 95 percent of the United States population within seven years; and provide coverage to 98 percent of the United States population within 10 years. As regards Alaska, the licensee would be required to provide coverage to all Alaskan cities of 10,000 or more within four years of the 700 MHz auction clearing date.

63. The ''E Block'' licensee would be responsible for managing and operating the public safety broadband network, and would be permitted to collect a reasonable network management fee. This fee, and the terms and conditions governing the ''E Block'' licensee's management of the network, would be specified in the Network Sharing Agreement.

64. The ''E Block'' licensee would be required to provide priority access to public safety broadband operations during times of emergency. These requirements would be specified in the Network Sharing Agreement.

65. Frontline also sets forth several additional elements of its proposal. The term of the ''E Block'' license would be for 15 years, and would be subject to a renewal expectancy upon the completion of ''substantial service.'' Participation by public safety would be purely voluntary, and that public safety would remain free to build its own network in the 700 MHz spectrum. In addition, Frontline proposes that the ''E Block'' licensee be required to operate as a wholesale provider with respect to commercial use of the ''E Block'' spectrum. Frontline also proposes that the ''E Block'' licensee be required to provide open access to its network, allowing the attachment of any device to the network and permitting users to access services and content provided by unaffiliated parties. As proposed, this requirement would apply not only to the ''E Block'' license, but to all other licenses owned or controlled by the ''E Block'' licensee. Similarly, Frontline recommends that the ''E Block'' licensee be required to offer roaming to any provider with customers utilizing devices compatible with the ''E Block'' network, and that such obligation be extended to all spectrum holdings of the ''E Block'' licensee.

66. The FCC seeks comment on the proposal's likely effects on both the commercial and public safety users in the 700 MHz Band, and whether it would be in the public interest for the FCC to adopt such a proposal, or alternatives to achieve the same or similar public interest goals. The FCC also seeks comment on whether, and to what extent, it should: (a) Adopt certain, but not all, elements of the Frontline proposal; (b) modify any elements of the proposal, adopt any additional requirements, or adopt any alternative requirements to achieve the same or similar public interest goals; and (c) consider alternative approaches to encourage public-private partnerships for sharing spectrum between public safety users and commercial licensees in the 700 MHz Band.

67. The FCC seeks comment on the extent to which adoption of the Frontline, or similar, proposal should have an impact on its decisions regarding the Guard Bands. Under Frontline's proposal, Guard Band B Block would be located between the

new ''E Block'' and the public safety spectrum. The FCC seeks comment on whether the Guard Band B Block should be integrated with a new block of spectrum to be made available in the Upper 700 MHz Band for purposes of implementing the Frontline Plan or similar proposal.

68. Similarly, the FCC seeks comment on the extent to which adoption of the Frontline, or similar, proposal should affect its decisions regarding the remainder of the commercial spectrum blocks in the Upper 700 MHz Band that it is required to auction. The FCC asks that Frontline's proposal be evaluated within the context of the Commission's other proposals expressed in the FNPRM regarding the size of spectrum blocks and geographic service areas, including a comparison of Frontline's proposal that the 757–762 MHz and 787–792 MHz spectrum be designated for the new ''E Block.'' If the FCC adopted the Frontline proposal, the amount of spectrum to be auctioned for commercial services pursuant to flexible service and technical rules in the Upper and Lower 700 MHz Band would decrease by ten megahertz, from 60 to 50 megahertz.

69. The FCC seeks comment as well on Frontline's view that there is no need to impose any CALEA, E911, or similar obligations on the ''E Block'' licensee because it believes that retail service providers using the ''E Block'' spectrum will already be subject to those requirements. Should the FCC adopt any specific requirements applicable to retail service providers or equipment manufacturers in regard to the ''E Block?'' For example, should some or all public safety equipment operating on an ''E Block'' built network be capable of accessing satellite communications (including handsets and other mobile or fixed receivers)? Should the FCC require the ''E Block'' licensee to incorporate satellite-based technology into its network infrastructure?

70. The FCC notes Frontline's view that the proposed ''E Block'' licensee and a potential national public safety licensee would have strong incentives to reach agreement on suitable terms for a lease and that the Commission should not attempt to adopt detailed rules to implement its proposal but should rely on a requirement that the ''E Block'' licensee negotiate in good faith. Frontline proposes that the FCC should leave to the ''Network Sharing Agreement'' negotiations the definition of ''emergency'' for purposes of the requirement that the ''E Block'' licensee provide priority access to affected public safety broadband operations during emergencies.

71. The FCC tentatively concludes that if it adopted Frontline's proposal or some similar proposal, it will need to impose conditions on the ''E Block'' license as well as the national public safety license to deal with the circumstance where the bidder winning the new ''E Block'' at auction and the national public safety licensee are unable to reach agreement on a Network Sharing Agreement. Successful negotiation of that agreement is a critical first step to achieving the benefits to public safety under the Frontline proposal. The FCC is concerned that under certain circumstances the parties may not be able to reach agreement, which could result in a significant delay in implementation. To avoid this result, the FCC tentatively concludes that it will not grant a license to the bidder winning the ''E Block'' at auction until the winning bidder files a Network Sharing Agreement with the Commission for approval. The FCC would also condition the national public safety license on the licensee submitting to binding arbitration in the event it cannot reach agreement with the ''E Block'' winner. If the winning bidder and the national public safety licensee are unable to reach agreement, they would be required to enter into binding arbitration to resolve outstanding issues.

72. The FCC seeks comment on this tentative conclusion, and whether imposing such conditions would be an incentive for the parties to reach a suitable and speedy resolution in order to avoid arbitration. If the parties are unable to reach an agreement and thus have to submit to binding arbitration, would this condition then facilitate the ability of the parties to reach such an agreement? The FCC seeks comment on whether any particular requirements should be adopted in connection with such conditions, including a requirement that the parties report to the FCC on the status of the negotiations. The FCC also asks commenters to consider whether there are other conditions that should be placed on an ''E Block'' licensee to ensure that an agreement is reached quickly and in a manner that is satisfactory to public safety, or if there is additional oversight that the Commission should exercise. Should the FCC require that an agreement to be reached by a certain date? Should the FCC require status reports or other periodic reporting from the ''E Block'' licensee? If the FCC does not adopt a binding arbitration proposal, what should be the consequence for failing to reach agreement in a timely manner, or for otherwise failing to comply with the Network Sharing Agreement requirement? Should the FCC have authority to appoint board members to the governance of the ''E Block'' licensee?

73. The FCC also has serious concerns, based on Frontline's proposed requirements, about whether it should offer any bidding preferences, such as bidding credits, to applicants for the ''E Block'' license, based on their status as a small business, or designated entity. The FCC finds that the capital requirements for effective use of the proposed nationwide ''E Block'' license likely will be very high. In the past, the FCC has declined to adopt designated entity provisions for certain services, such as the direct broadcast satellite service and the digital audio radio service, which have extremely high implementation costs.

74. The FCC's concerns regarding the capital needed to implement a nationwide service are especially acute in this instance because the ''E Block'' licensee would be responsible for constructing a robust network to meet the needs of critical public safety service providers—and the public—in times of emergency. The FCC finds that in these circumstances, the public interest would not appear to favor giving applicants a preference when bidding for the ''E Block'' license based on their limited financial resources.

75. The FCC finds that the proposed restriction on such a licensee's ability to provide spectrum-based services directly to the public is also of concern when considering whether to offer such benefits. The FCC prohibits licensees from both receiving designated entity benefits and having wholesale agreements for more than fifty percent (50%) of the spectrum capacity of any license that they hold, which are defined as impermissible material relationships. In the event that the FCC offered bidding preferences with respect to such an ''E Block'' license, the existing rule plainly would preclude any licensee that is required to operate only as a wholesale provider from receiving designated entity benefits. For all these reasons, the FCC tentatively concludes that designated entity benefits for the ''E Block'' license proposed by Frontline, would not be available, and seeks comment on this tentative conclusion.

76. The FCC also seeks comment on whether any service specific rules are needed to address what actions the Commission may or must take in the event that the ''E Block'' licensee encounters financial or other problems

that prevent compliance with any of its obligations, regarding build-out or other duties. Frontline contends that the Commission's general rules regarding reclaiming and re-auctioning the spectrum are sufficient to address this possibility. The FCC seeks comment on whether the particular obligations proposed for the ''E Block'' would make additional provisions in the public interest. For example, should there be some special process for public safety entities or others to challenge the ''E Block'' licensee's compliance with its public safety or wholesale obligations? Should the ''E Block'' license cancel automatically based on failure to comply with specified obligations? Should the FCC establish an unjust enrichment requirement to be paid in the event the Commission is unable to reclaim the license for any reason upon failure of the ''E Block'' licensee to comply with its obligations? If so, how should the amount of such a payment be calculated? If the FCC were to reclaim the license, could it also hold any network infrastructure built by the licensee in trust for public safety to avoid interruption of service to first responders? Alternatively, should the FCC provide for a rebate of a portion of the net bid amount paid by the ''E Block'' licensee at auction upon satisfaction of the conditions of the license and, if so, what should be the amount of such rebate? What other enforcement mechanisms might be appropriate?

77. The FCC also seeks comment on Frontline's proposal that the ''E Block'' licensee be required to operate a wholesale network. Frontline claims that this requirement would encompass freedom of equipment choice concerning the attachment of devices or multiple devices to the network. It also states that this proposal would provide non-discriminatory access, and that the ''E Block'' licensee could not discriminate against any retail service provider, and would operate ''as an open network available on a wholesale basis to a host of innovative service providers.'' The FCC seeks comment on these issues. The FCC also seeks comment on proposals filed by Media Access Project and the Ad Hoc Public Interest Spectrum Coalition, which support a condition on licenses for at least 30 megahertz of 700 MHz Commercial Services spectrum that would require a licensee to provide ''open access,'' including the right of a consumer to use any equipment, content, application or service on a non-discriminatory basis.

Ex Parte Presentations

78. The rulemaking shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules.[8] 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 generally is required.[9] Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules.[10]

Comment Period and Procedures

79. Pursuant to §§ 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. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<bullet≤ 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 website for submitting comments.

<bullet≤ For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

<bullet≤ Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

<bullet≤ 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.

<bullet≤ 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.

<bullet≤ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

<bullet≤ Parties should send a copy of their filings to Paul D'Ari, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *paul.d'ari@fcc.gov*.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Initial Regulatory Flexibility Act Analysis

80. As required by the Regulatory Flexibility Act of 1980, as amended (the ''RFA''),[11] the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact of the policies and rules proposed in the Further Notice of Proposed Rulemaking (''FNPRM'') on a substantial number of small entities.[12] Written public comments are requested on this IRFA.

[8] 47 CFR 1.200 *et seq.*

[9] *See* 47 CFR 1.1206(b)(2).

[10] 47 CFR 1.1206(b).

[11] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[12] *See* 5 U.S.C. 603. Although we are conducting an IRFA at this stage in the process, it is foreseeable that ultimately we will certify this action pursuant to the RFA, because we anticipate at this time that any rules adopted pursuant to this *Notice* will have no significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided in paragraph 297 of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').[13] In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.[14]

81. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band,[15] the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this IRFA contains an analysis of this impact in connection with all spectrum that falls within the scope of this FNPRM, including spectrum in the 746–806 MHz Band.

A. Need for, and Objectives of, the Proposed Rules

82. The FNPRM encompasses issues pertinent to all three of our 700 MHz proceedings, as well as to Frontline's proposal. First, based on the record developed in connection with the *700 MHz Commercial Services Notice*, the FNPRM proposes several band plans that include a mix of small, medium and large geographic area licenses.

83. Second, the FNPRM also proposes to replace the current substantial service requirement with a geographic-based performance requirement, and seeks comment on this suggestion.

84. Third, the FNPRM tentatively concludes that the Commission can adopt neither the Broadband Optimization Plan (BOP), nor the proposals to reallocate and reassign commercial spectrum to critical infrastructure industries (CII) or public safety entities, because we do not have the statutory authority to adopt key components of the proposals. Irrespective of the lack of statutory authority, the FNPRM also tentatively concludes that the BOP and CII proposals would not be in the public interest, because of the manner in which they propose to assign commercial licenses outside of a competitive bidding context, and because they could introduce an increased possibility of interference.

85. Fourth, the FNPRM asks certain questions specifically related to the current Upper 700 MHz Guard Bands, in the event that the Commission maintains the current sizes and locations of either block of the Guard Bands licenses. The FNPRM also seeks comment on the alternative Guard Bands proposal recently submitted by Access Spectrum and Pegasus, as well as variations on that proposal.

86. Fifth, the FNPRM seeks to achieve broadband communications capabilities consistent with a nationwide interoperability standard for public safety. The Commission expects that modern public safety services will increasingly depend on the advanced communications capabilities afforded by wireless broadband technologies, which should enable first responders to perform their vital safety-of-life and other critical roles. The FNPRM tentatively concludes to redesignate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis. The FNPRM then seeks comment on a tentative conclusion to consolidate the narrowband spectrum to the top of the Public Safety Band, locate the broadband spectrum at the bottom of the Public Safety Band, and divide these segments with an internal guard band. Given this tentative conclusion, the FNPRM also seeks comment on a limited set of issues that would need to be resolved in order to effectuate the reconfiguration. This proposed reconfiguration would reduce the amount of spectrum necessary to separate and protect the public safety broadband and narrowband allocations, and could facilitate partnerships between public safety broadband operations and adjacent commercial broadband technologies, thereby optimizing the 700 MHz public safety band plan.

87. Finally, the FNPRM seeks comment on the ''Public Safety Broadband Deployment Plan'' proposal submitted very recently by Frontline Wireless, which if adopted in some form potentially would affect decisions in all three proceedings.

B. Legal Basis

88. The legal authority for the actions proposed in this rulemaking are contained in sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. § § 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, and 337.

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

89. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[16] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [17] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[18] 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'').[19]

90. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.[20]

91. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.[21]

92. *Governmental Entities.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' [22] As of 2002, there were approximately 87,525 governmental jurisdictions in the United States.[23] This number includes 38,967 county

[13] *See* 5 U.S.C. 603(a).

[14] *See* 5 U.S.C. 603(a).

[15] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)–(B).

[16] 5 U.S.C. 603(b)(3).

[17] 5 U.S.C. 601(6).

[18] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[19] 15 U.S.C. 632.

[20] *See* SBA, Programs and Services, SBA Pamphlet No. CO–0028, at page 40 (July 2002).

[21] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[22] 5 U.S.C. 601(5).

[23] U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, pages 272–273, Tables 415 and 417.

governments, municipalities, and townships, of which 37,373 (approximately 95.9%) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 85,931 or fewer.

93. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' [24] and ''Cellular and Other Wireless Telecommunications.'' [25] Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.[26] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[27] Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.[28] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[29] Thus, under this second category and size standard, the majority of firms can, again, be considered small.

94. Under this FNPRM, any of the changes to the Commission's rules which may occur as a result of the FNPRM would be limited to the 698–806 MHz spectrum band. Since this rulemaking proceeding applies to services in that band, this IRFA analyzes the number of small entities affected on a service-by-service basis. When identifying small entities that could be affected by the Commission's new rules, this IRFA provides information describing auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated. Consequently, to assist the Commission in analyzing the total number of potentially affected small entities, the Commission requests commenters to estimate the number of small entities that may be affected by any rule changes that might result from this FNPRM.

95. *700 MHz Guard Band Licenses.* In the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[30] A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[31] 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 $15 million for the preceding three years.[32] SBA approval of these definitions is not required.[33] An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.[34] 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.[35]

96. *Upper 700 MHz Band Licenses.* The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.[36] An auction for these licenses, previously scheduled for January 13, 2003, was postponed.[37]

97. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.[38] The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years.[39] A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years.[40] Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as 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.[41] The SBA has approved these small size standards.[42] An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.[43] A second auction

[24] 13 CFR 121.201, NAICS code 517211.

[25] 13 CFR 121.201, NAICS code 517212.

[26] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

[27] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[28] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[29] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[30] *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Report and Order,* 15 FCC Rcd 5299 (2000).

[31] *Id.* at 5343 ❙ 108.

[32] *Id.*

[33] *Id.* At 5343 ❙ 108 n.246 (for the 746–764 MHz and 776–704 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain Small Business Administration approval before adopting small business size standards).

[34] *See* ''700 MHz Guard Bands Auction Closes: Winning Bidders Announced,'' *Public Notice,* 15 FCC Rcd 18026 (2000).

[35] *See* ''700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,'' *Public Notice,* 16 FCC Rcd 4590 (WTB 2001).

[36] Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, *Second Memorandum Opinion and Order,* 16 FCC Rcd 1239 (2001).

[37] *See* ''Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,'' *Public Notice,* 16 FCC Rcd 13079 (WTB 2003).

[38] *See* Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order,* 17 FCC Rcd 1022 (2002).

[39] *Id.* at 1087–88 ❙ 172.

[40] *Id.*

[41] *Id.* at 1088 ❙ 173.

[42] *See* Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, Small Business Administration, dated August 10, 1999.

[43] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 17 FCC Rcd 17272 (WTB 2002).

commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.[44] Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.[45]

98. *Public Safety Radio Licensees.* As a general matter, public safety radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[46] The SBA rules contain a small business size standard for cellular and other wireless telecommunications companies, which encompasses business entities engaged in wireless communications employing no more than 1,500 persons.[47] According to Census Bureau data for 2002, in this category there were 8,863 firms that operated for the entire year.[48] Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees.[49] With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

99. Wireless Communications Equipment Manufacturers; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' [50] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.[51] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[52] Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.[53] Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

100. *Performance Requirements.* The FNPRM proposes to replace the current substantial service requirement with a geographic-based performance requirement, and seeks comment on this suggestion.

101. *Incumbent Eligibility.* The FNPRM seeks comment on a proposal to encourage the entry of new competitors by excluding incumbent local exchange carriers (ILECs), incumbent cable operators, and large wireless carriers from eligibility for licenses in the 700 MHz Band. The FNPRM also seeks comment on whether incumbents should only be eligible for licenses in the 700 MHz band through structurally separate affiliates, which would make it possible to detect whether the incumbent receives more favorable treatment than unaffiliated providers. The FNPRM seeks comment on whether the Commission should encourage the entry of new broadband competitors through lesser restrictions on eligibility for obtaining new licenses, both at auction and in the secondary market. Finally, as an alternative to limiting the parties eligible for new licenses in the 700 MHz Band, the FNPRM seeks comment on whether parties unaffiliated with incumbent wireline broadband service providers should receive a bidding credit on licenses in the Upper 700 MHz C Block, and how such new entrant bidding credits should be coordinated with existing bidding credits for small businesses (*i.e.*, whether new entrant credits should be cumulative or exclusive of small business bidding credits).

102. *Anonymous Bidding.* The FNPRM seeks comment on whether the Commission should use limited information (or ''anonymous bidding'') procedures in the upcoming auction of new 700 MHz licenses, in order to deter anticompetitive behavior that may be facilitated by the release of information on bidder interests and identities.

103. *Public Safety Broadband.* The FNPRM tentatively concludes to redesignate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis. The Commission has issued no licenses for wideband channels. Furthermore, although two special temporary authorizations (STAs) have been issued for wideband operations, to the extent a public safety entity has constructed, deployed and is currently operating, as of the release date of the accompanying *Report and Order,* a wideband system pursuant to a grant of STA, and has reason to continue such operations beyond the current term of the STA, the FNPRM states that the Commission will work with such entity to extend such authority. The FNPRM also seeks comment on a tentative conclusion to consolidate the narrowband channels to the top of the public safety band, locate the broadband spectrum at the bottom of the public safety band, and divide these segments with an internal guard band.

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[44] *See* ''Lower 700 MHz Band Auction Closes,'' *Public Notice,* 18 FCC Rcd 11873 (WTB 2003).

[45] *Id.*

[46] *See* subparts A and B of Part 90 of the Commission's Rules, 47 CFR 90.1–90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code), and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

[47] *See* 13 CFR 121.201 (NAICS code 517212); U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Employment Size of Establishments for the United States: 2002,'' Table 2, NAICS code 517212.

[48] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Employment Size of Establishments for the United States: 2002,'' Table 2, NAICS code 517212.

[49] *Id.*

[50] U.S. Census Bureau, 2002 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; *http://www.census.gov/epcd/naics02/def/NDEF334.HTM●N3342.*

[51] 13 CFR 121.201, NAICS code 334220.

[52] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); *http://factfinder.census.gov.* The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks out data for firms or companies only to give the total number of such entities for 2002, which was 929.

[53] *Id.* An additional 18 establishments had employment of 1,000 or more.

These tentative conclusions may entail additional reporting, recordkeeping or other compliance efforts by existing public safety entities. The FNPRM does not otherwise propose any additional reporting, recordkeeping or other compliance requirements.

104. *Frontline Proposal.* The FNPRM seeks comment on Frontline's proposed ''Public Safety Broadband Deployment Plan.'' This plan would alter the upper portion of the band plan and service rules in order to auction a single nationwide 10-megahertz license (a new ''E Block''). The ''E Block'' licensee would be required to meet certain build-out benchmarks, and would be required to provide priority access for public safety broadband operations during times of emergency as specified in a Network Sharing Agreement. Under the proposal, the ''E Block'' licensee would be required to operate as a wholesale provider with respect to commercial use of the ''E Block'' spectrum. It also would be required to provide open access to its network, allowing the attachment of any device to the network and permitting users to access services and content provided by unaffiliated parties. In addition, Frontline's proposal would require the ''E Block'' licensee to offer roaming to any provider with customers utilizing devices compatible with the ''E Block'' network, with such obligation extended to all spectrum holdings of the ''E Block'' licensee. Frontline's proposal also would require the ''E Block'' licensee to operate only as a wholesale provider with respect to commercial use of the ''E Block'' license, *i.e.*, it must have wholesale agreements for 100 percent of its spectrum capacity.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

105. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such 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 such small entities.'' [54]

106. *Performance Requirements.* Commenters who are small carriers could be found among commenters who supported both a substantial service requirement and a ''keep what you use'' framework. Some small CMRS providers recommended a combination of both population- and geography-based construction benchmark in the context of a ''keep-what-you-use'' approach.[55] The FNPRM proposes to replace the current substantial service requirement with a geographic-based performance requirement, and seeks comment on this suggestion.

107. By establishing clear benchmarks, the Commission would provide small licensees with regulatory certainty regarding the requirements that they must meet or, if they do not, permit other providers to gain access to the spectrum to provide services to consumers. The adoption of more stringent benchmarks also would complements the Commission's determination to auction additional licenses based on smaller geographic areas to promote access to spectrum and the provision of service, especially in rural areas.

108. The Commission recognizes that the existing substantial service standard could allow providers, including small carriers, additional flexibility with regard to their development and deployment of certain services.[56] The Commission determines, however, that given the excellent propagation characteristics of this spectrum, the benefits of service being offered before the end of the license term, and the public interest that would be served by ensuring additional service in the more rural and remote areas of this country, more rigorous requirements may be appropriate for these 700 MHz Commercial Services licenses.[57]

109. *Incumbent Eligibility.* The proposals to prevent incumbents from being eligible to participate in the 700 MHz auctions can benefit small entities to the extent that they find less competition at auction from large entities such as established incumbent licensees, including wireline providers. Additionally, the proposal to provide bidding credits with regard to the Upper 700 MHz C Block for parties unaffiliated with incumbent wireline broadband service providers could encourage new entry by small entities.

110. *Anonymous Bidding.* Smaller auction participants can benefit from having access to information about larger entities' bids during the auction, and smaller auction participants may encounter difficulties with financing if the Commission withholds the information during the auction. However, the potential to use new 700 MHz licenses to create alternatives to existing broadband networks increases the benefits from anonymous bidding by making it harder for existing providers to identify and impede the efforts of potential new entrants to win. Accordingly, in seeking comment on whether to require anonymous bidding for 700 MHz auctions, the Commission balances the difficulties it may cause to smaller auction participants, against the opportunities for new entrants—including small entities—that may result from anonymous bidding.

111. *700 MHz Band Plan Proposals.* The FNPRM includes several proposals to reconfigure the 700 MHz Band plan. Under any revised band plan, the Commission seeks comment on whether the spectrum block adjacent to the Public Safety Band's lower half would, pursuant to another tentative conclusion, be responsible for funding the reconfiguration of the public safety spectrum with the narrowband channels at the upper end and a broadband allocation at the lower end. This proposal would, if adopted, impose additional economic burdens on any small business that procured the spectrum block adjacent to the Public Safety Band's proposed broadband allocation.

112. The FNPRM also proposes to license the 700 MHz Band using a mix of small, medium and large geographic areas. These proposed service area definitions should benefit small businesses, because they would enhance the mix of licenses to be made available in the 700 MHz Band, and are consistent with the goals of providing greater access to spectrum for small providers and parties in rural areas, and improving the opportunity for a wider range of potential licensees to access this spectrum.

113. *Public Safety Broadband.* The FNPRM tentatively concludes to reallocate the wideband spectrum to broadband use that would be consistent with a nationwide interoperability

[54] 5 U.S.C. 603(c)(1)–(4).

[55] *See, e.g.*, DirecTV/EchoStar Comments in WT Docket 06–150 at 9; Navajo Nation Comments in WT Docket 06–150 at 2–3; RCA Comments in WT Docket 06–150 at 8–10; Vermont Department of Public Service, *et al.* Comments in WT Docket 06–150 at 5–8. The Navajo Nation, RCA, and the Vermont Department of Public Service, *et al.* favorably discuss both benchmarks and a ''keep-what-you-use'' approach.

[56] *See* AT&T Comments in WT Docket 06–150 at 12–13; CTIA Comments in WT Docket 06–150 at 10; Dobson Comments in WT Docket 06–150 at 5; Leap Comments in WT Docket 06–150 at 10.

[57] *See, e.g.*, Aloha Comments in WT Docket 06–150 at 2; Blooston Comments in WT Docket 06–150 at 3; Dobson Comments in WT Docket 06–150 at 3; Frontier Comments in WT Docket 06–150 at 4; NTCA Comments in WT Docket 06–150 at 3–5; RCA Comments in WT Docket 06–150 at 3–4; RTG Comments in WT Docket 06–150 at 4–5.

standard, and prohibit wideband operations on a going forward basis. The public safety community expressed broad support for a broadband allocation to enable advanced communications capabilities. The availability of a contiguous block of broadband spectrum, subject to a nationwide interoperability standard, would enable partnerships with commercial licensees in adjacent broadband spectrum. As a result, the proposed band plan would ultimately enable public safety entities to utilize the 700 MHz spectrum in a more cost-effective and spectrally efficient manner to address their homeland security and emergency response roles. Because the Commission does not anticipate that the proposal will impose additional economic burdens on public safety, and is in fact designed to reduce economic burdens on public safety, the Commission has taken steps to minimize any adverse impact of the rule changes.

114. The FNPRM also seeks comment on its tentative conclusion to consolidate the narrowband spectrum to the top of the public safety band and locate the broadband spectrum at the bottom of the public safety band, in light of the potentially significant benefits such reconfiguration would afford the public safety community. The alternative would be to retain the existing band plan. The FNPRM seeks comment on how to implement reconfiguration of the narrowband channels with minimum disruption to incumbent operations. The FNPRM invites comment on an appropriate transition mechanism, including how to accommodate public safety operations in the border areas with Canada and Mexico, and the costs of relocation and how such costs will be covered. The Commission expects that the number of entities impacted and expected cost of reconfiguration should be relatively minor. To assist the Commission in its analysis, however, commenters are requested to provide information regarding the number of narrowband radios that are deployed, as well as the number of radios that are in active use, and thus would be affected by the proposed changes to the 700 MHz public safety band plan as described in the FNPRM. The FNPRM recognizes that the public safety community's ability to fund the reconfiguration may be limited. Thus, in addition to considering whether public safety should pay for its own relocation costs, the FNPRM seeks comment on several alternatives, including whether to impose funding requirements on 700 MHz commercial licensees, and whether Federal or other grant monies could be used. In the event the Commission determines to license the broadband allocation to a nationwide public safety broadband licensee, the FNPRM also invites comment on whether that licensee should be assigned responsibility for funding the reconfiguration.

115. Although the economic burden on public safety to effectuate reconfiguration is expected to be relatively small, the FNPRM will develop a record on the true costs that would be implicated. The Commission remains open to considering alternatives, however, should an alternative be stated in comments that would reach our objectives and minimize the impact on public safety entities.

116. *Frontline Proposal.* In the FNPRM, the Commission seeks comment on Frontline's proposed ''Public Safety Broadband Deployment Plan.'' Although Frontline proposes that the Commission offer bidding credits to applicants based on their status as a small business, the Commission tentatively concludes in the FNPRM that it should not offer any bidding preferences, such as bidding credits, to applicants for the ''E Block'' license. The FNPRM states, however, that the public interest would not appear to favor giving applicants a preference when bidding for the ''E Block'' license based on their limited financial resources, as the Commission does when it offers bidding credits to small businesses in these circumstances. The Commission stated that its concerns regarding the capital needed to implement a nationwide service are especially acute in this instance, because the ''E Block'' licensee would be responsible for constructing a network to meet the needs of critical public safety providers. The Commission seeks comment on this tentative conclusion.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

117. None.

Ordering Clauses

118. *It is further ordered* pursuant to Sections 1, 2, 4(i), 5(c), 7, 10, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, 337, 614, 615, and 710 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c), 157, 160, 201, 202, 208, 214, 301, 302, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 332, 333, 336, and 337, that this further notice of proposed rulemaking in WT Docket No. 06–150, CC Docket No. 94–102, WT Docket No. 01–309, WT Docket No. 03–264, WT Docket No. 06–169, WT Docket No. 96–86 and PS Docket No. 06–229 IS ADOPTED.

119. *It is further ordered* that pursuant to applicable procedures set forth in § § 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on the further notice of proposed rulemaking on or before May 23, 2007 and reply comments on or before May 30, 2007.

120. *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.

121. *It is further ordered* that the Commission shall send a copy of this further notice of proposed rulemaking in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–8440 Filed 5–1–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition to List the Sand Mountain Blue Butterfly (Euphilotes pallescens ssp. arenamontana) as Threatened or Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding on a petition to list the Sand Mountain blue butterfly (*Euphilotes pallescens arenamontana*) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that the petitioned action is not warranted. We ask the public to continue to submit to us any new information concerning

the status of, and threats to, this subspecies. This information will help us to monitor and encourage the ongoing management of this subspecies.

DATES: The finding announced in this document was made May 2, 2007.

ADDRESSES: Data, information, comments, or questions regarding this notice should be submitted to the Field Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Boulevard, Suite 234, Reno, NV 89502. The complete administrative file for this finding is available for inspection, by appointment and during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES**) (telephone 775/861–6300; facsimile 775/861–6301).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the List of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether any species is threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Wildlife and Plants. Such 12-month findings are to be published promptly in the **Federal Register**. Section 4(b)(3)(C) of the Act requires that a petition for which the requested action is found to be warranted but precluded shall be treated as though resubmitted on the date of such finding (that is, requiring a subsequent finding to be made within 12 months).

Previous Federal Action

We included the Sand Mountain blue butterfly under the name *Euphilotes rita* ssp. as a Category 2 candidate species in our November 21, 1991 Candidate Notice of Review (CNOR) (56 FR 58829). Category 2 included taxa for which information in our possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. The Sand Mountain blue butterfly remained a Category 2 candidate as *Euphilotes rita* ssp. in our 1994 CNOR (November 15, 1994; 59 FR 59020). In the CNOR published on February 28, 1996 (61 FR 7596), we adopted a single category of candidate species defined as follows: ''Those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded.'' In previous CNORs, species matching this definition were known as Category 1 candidates for listing. Thus the Service no longer considered Category 2 species as candidates, and did not include them in the 1996 or any subsequent CNORs. The decision to stop considering Category 2 species as candidates was designed to reduce confusion about the status of these species, and to clarify that we no longer regarded these species as candidates for listing. Since the Sand Mountain blue butterfly was a Category 2 species, we no longer recognized it as a candidate species as of the February 28, 1996, CNOR (61 FR 7457).

On April 23, 2004, we received a formal petition, dated April 23, 2004, from the Center for Biological Diversity, Xerces Society, Public Employees for Environmental Responsibility, and the Nevada Outdoor Recreation Association, requesting that the Sand Mountain blue butterfly, currently recognized as *Euphilotes pallescens* ssp. *arenamontana* taxonomically, known only from Sand Mountain, Nevada, be listed as threatened or endangered in accordance with section 4 of the Act, and that critical habitat be designated for the species concurrent with the listing. The petition is available on the Nevada Fish and Wildlife Office Web site (go to *http://www.fws.gov/nevada/* and click on the Nevada Species link, then on Sand Mountain blue butterfly link).

Action on this petition was precluded by court orders and settlement agreements for other listing actions that required nearly all of our listing funds for fiscal years 2004 and 2005. On September 26, 2005, we received a 60-day notice of intent to sue, and on January 5, 2006, we received a complaint regarding our failure to carry out the 90-day finding on the petition to list the Sand Mountain blue butterfly. On April 20, 2006, we reached an agreement with the plaintiffs to submit to the **Federal Register** a completed 90-day finding by July 28, 2006. The agreement specified that if our 90-day finding concluded that the petition contained substantial information, we would complete a 12-month finding by April 26, 2007 (*Center for Biological Diversity et al.* v. *Norton, and U.S. Fish and Wildlife Service* (CV–00023–LKK–GGH), (E.D. Cal)).

On August 8, 2006, we published our 90-day finding in the **Federal Register** (71 FR 44988), in which we concluded that the petition presented substantial scientific or commercial information to indicate that listing the Sand Mountain blue butterfly may be warranted, we initiated a status review of the taxon, and we solicited comments and information to be provided in connection with the status review by October 10, 2006. This notice constitutes our 12-month finding and is submitted in fulfillment of the April 20, 2006, stipulated settlement agreement.

On August 18, 2006, we became a signatory to the multi-party Sand Mountain Blue Butterfly Conservation Plan (Conservation Plan), which became effective September 21, 2006 (Lahontan Valley Environmental Alliance (LVEA), 2006). For a further discussion of the Conservation Plan, see the ''Conservation Efforts'' section below.

Biology and Distribution

The genus *Euphilotes*, in the family Lycaenidae, is comprised of five species of small, pale blue butterflies from western North America that are distinguished by discrete differences in genitalia (Pratt 1994, p. 388). The genus is noteworthy for its close relationship with the plant genus *Eriogonum* (wild buckwheat), a genus of about 250 species of shrubs, subshrubs, and herbs largely from western North America (Reveal 2005). *Euphilotes* taxa are among the most specialized of the North American butterflies in host plant adaptations (Pratt 1988, p. 63). They typically utilize species of *Eriogonum* for mating, obtaining nectar, host searching, and egg laying (Pratt 1994, p. 388). Many of the species and subspecies within the genus have highly restricted ranges, in part because of this specialized relationship with *Eriogonum.* The larvae (and to some degree the adults) of *Euphilotes* subspecies are known to specialize on the flowers and seeds of specific *Eriogonum* (Pratt 1988, p. 104). This relationship has been the subject of several studies on evolution (Shields and Reveal 1988, pp. 51–93; Pratt 1988, pp. 1–653; Pratt 1994, pp. 387–416).

The pale blue butterfly, *Euphilotes pallescens*, was first described by Tilden and Downey in 1955 under the name *Philotes pallescens* based on specimens collected in Tooele County, Utah (Pratt 1988, p. 18; Mattoni 1965, pp. 81, 94). Mattoni (1965, p. 94) reduced the taxon to a subspecies which he called *Philotes*

(=*Euphilotes*) *rita* ssp. *pallescens*, but he only examined a pair of specimens collected at the same time as the original collection by Tilden and Downey. Mattoni based his taxonomic conclusion on the configuration of the male genitalia, which was thought to be the primary characteristic distinguishing *P. rita* from all other members of the genus (Mattoni 1965, p. 81; Shields 1977, p. 2), and his opinion that ''greater biological meaning arises from a classification based upon relationship rather than difference'' (Mattoni 1965, p. 99).

In the first modern biosystematic analysis of the genus, Pratt (1988, 1994) used cladistic analysis, a method of examining taxonomic relationships among species using shared derived characteristics (features possessed by two or more taxa in common), to assess its members of the genus *Euphilotes.* He compared 79 morphological characters and analyzed enzymes (proteins), allelic variation (variation in genes coding for same trait), and diapause (period of suspended growth or development similar to hibernation) intensity among 36 taxa of *Euphilotes* from western North America (Pratt 1988, 1994). Based on these analyses, he concluded that *Euphilotes pallescens* should be recognized as a full species (Pratt 1994, pp. 401–402; Pratt and Emmel 1998, p. 209). The Sand Mountain blue butterfly was first described as *Euphilotes pallescens* ssp. *arenamontana* by Austin in 1998 (1998, pp. 556–557); it is one of seven named subspecies of the pallid blue butterfly in Nevada (Murphy et al. 2006, p. 2). Prior to the 1998 publication of this name, the Sand Mountain blue butterfly had been considered a potentially distinct subspecies of *Euphilotes rita* (Austin 1985, p. 105), the name under which it was previously assigned a Federal Category 2 candidate status (see Previous Federal Action section).

The Sand Mountain blue butterfly is small with pale blue coloration. Males have a wingspan that ranges from 10.0 to 11.8 millimeters (mm) (0.39 to 0.46 inches (in)), with an average of 11.1 mm (0.44 in). The dorsum (back) is pale bluish violet, often whitish distally, with a narrow (0.5 mm (0.002 in)) black outer margin. There is usually a series of dots on the hindwing, but sometimes no more than a terminal line on the forewing. There is generally an indistinct pinkish to pale orange aurora of moderate width on the posterior hindwing. At the vein tips on the posterior of both wings, there are fringes of white with indistinct gray checkering. The bottom surface of the male abdomen is chalky white. Macules (patches of different coloration) are small, often nearly obsolete on the hindwing. Females have a wingspan that ranges from 10.0 to 11.9 mm (0.39 to 0.46 in), with an average of 10.9 mm (0.43 in). The female dorsum (back) is brown to tan, and usually pale bluish-gray basally on both wings. The forewing has a faint brown cell-end bar, while the hindwing has marginal dots. The forewing apex is usually whitish. The hindwing aurora is pale orange to pale pink, usually grading to nearly white distally and not strongly contrasting (Austin 1998, p. 556).

The Sand Mountain blue butterfly is the palest of all *Euphilotes.* The ground color of both sexes is considerably paler than that of *E. pallescens* ssp. *pallescens.* The pinkish aurora is unlike that of any other *Euphilotes*. The pale bluish-gray wing bases of the female do not contrast with the distal area of the wing as they do on *E. pallescens* ssp. *pallescens*. The black macules of *E. pallescens* ssp. *arenamontana* tend to be smaller than those of *E. pallescens* ssp. *pallescens* (Austin 1998, p. 557).

The species *Euphilotes pallescens* is distributed discontinuously from southern and central California (east of the Sierra Nevada) through the Great Basin of central Nevada and across central and southern Utah (Pratt 1994, p. 402; Shields 1977). The subspecies known as the Sand Mountain blue butterfly is known only from Sand Mountain, Churchill County, Nevada, where it is dependent on its host plant, *Eriogonum nummulare* (Kearney buckwheat) (Austin 1998, p. 557; Shields 1977, p. 3), a long-lived, perennial shrub with numerous branches (Reveal 2002, p. 1), that occurs in scattered sandy locations in several western States (Welsh et al. 1993, p. 547). Searches have been conducted within 60 miles (mi) (100 kilometers (km)) of Sand Mountain in an effort to determine the presence or absence of Kearney buckwheat occurrences on sand dunes that might be able to sustain occurrences of Sand Mountain blue butterflies; to date, no additional populations of Kearney buckwheat have been found (Funari 2004; Caicco 2006a, 2006b). Kearney buckwheat was reported in 1981 to occur in small numbers along the eastern edge of Blowsand Mountain, which lies about 12 mi (19.2 km) southwest of Sand Mountain (The Nature Conservancy 2004), but no plants were observed during three reconnaissance surveys in 2003 and 2004 (Funari 2004). Many butterflies in the family Lycaenidae have very limited dispersal distances that revolve intimately around their patchily distributed host plants (Peterson 1996, p. 1990). Dispersal of the Sand Mountain blue butterfly has not been studied, but in another species in the same genus, *Euphilotes enoptes*, most adults were found to move less than 1,640 feet (ft) (500 meters (m)) and their dispersal distance rarely exceeded 0.6 mi (1 km) (Arnold 1983 and Peterson 1994, as cited in Peterson 1996, p. 1990).

Isolated sand dunes are common throughout the Great Basin, often associated with depositional areas for windborne sediments derived from the now dry beds of Pleistocene Epoch lakes; these geologic features are referred to as pluvial lakes, indicating their origins during the periods of greater precipitation and lower evaporation typical of the Pleistocene climate of the Great Basin. Studies of dispersal of the sand dune-obligate beetle, *Eusattus muricatus*, widely distributed throughout the Great Basin and Mojave Deserts, have shown that populations on dunes separated by approximately 60 mi (100 km) generally exchange very few migrants, even among dunes within the same pluvial basin (Britten and Rust 1996, p. 651). Based on these data, the authors of this study recommended that all dune-obligate populations in the Great Basin separated by 60 mi (100 km) or more from the nearest dune within the same pluvial lake basin be considered genetically isolated (Britten and Rust 1996, p. 651). In fact, taxonomic distinctions made within *Euphilotes pallescens* are generally consistent with this approach, with *E. p.* ssp. *calneva* described from sand dunes in the Honey Lake area of northeastern California and near Sand Pass, in adjacent Nevada (Emmel and Emmel, pp. 277–282; Brussard 2006, p. 1; Murphy 2006a), and *E. p.* ssp. *ricei*, known only from the Silver State Sand Dunes, which are north of Winnemucca, Nevada (Austin et al. 2000, p. 3; Brussard 2006, p. 1; Murphy 2006a); each of these sand dune areas lies within the Lahontan pluvial basin at a minimum distance of about 120 mi (192 km) from Sand Mountain.

We conclude that it is highly unlikely that the Sand Mountain blue butterfly occurs at other sites within 60 mi (100 km). Areas within 60 mi (100 km) have been surveyed to various extents with no reported observations of the butterfly's host plant, Kearney buckwheat. We also conclude that the subspecies is unlikely to be found at sites located more than 60 mi (100 km) from Sand Mountain. Any population of *Euphilotes pallescens* found at any sites at distances greater than 60 mi (100 km) is most likely to be another subspecies of *Euphilotes pallescens*, based on the

current accepted taxonomy of the species and the likely genetic isolation of *E. pallescens* ssp. *arenamontana* due to its life history, ecology, and limited dispersal ability. Based on satellite imagery used to identify dune shrub habitat (BLM 2003, 2004), we estimate that the current range of the subspecies is approximately 1000 acres (405 ha), within which Kearney buckwheat is scattered in patches and is a dominant or co-dominant shrub on approximately 500–600 ac (202–243 ha) (BLM 2006b). Thus, while Sand Mountain blue butterflies may be present anywhere within their entire 1,000 ac (405 ha) range, only 50 to 60 percent of this range is thought to have the Kearney buckwheat shrubs on which they depend.

All *Euphilotes* larvae are believed to diapause by burying into the soil 12.7 to 38.1 inches (in) (5 to 15 centimeters (cm)) prior to pupation, which may be delayed for up to 6 years depending on climatic conditions (Pratt 1988, p. 319). When this period of diapause is broken, the pupae begin development and eventually emerge as adults from beneath the soil. The ability of larvae to suspend growth for varying periods of time may be part of the reason that the genus *Euphilotes* has high genetic diversity (Pratt 1988, pp. 427–428), presumably because it increases the likelihood for random mating.

Because of the small size of the Sand Mountain blue butterfly and the frequent high winds typical of the Sand Mountain area, it is likely that adult butterflies spend most of their life sheltered within the canopy of Kearney buckwheat plants (Murphy 2006a). Males of the genus exhibit a type of mate-searching behavior known as patrolling, which involves active searching for potential mates (Pratt 1988, p. 371).

Kearney buckwheat typically occurs at Sand Mountain as a dominant or co-dominant with other shrubs on less active, smaller vegetated dunes around the periphery of the main dune (The Nature Conservancy 2004, pp. 24–26). Kearney buckwheat flowers and seeds are the sole food source for the larvae (Pratt 1988, p. 64) and an important nectar source for adults during their flight period (Murphy et al. 2006, p. 1).

The flowering period of the Kearney buckwheat at Sand Mountain begins in late June to early July and continues through September (Reveal 2002, p. 2). Like many species of wild buckwheat (Meyer 2006), individual Kearney buckwheat plants may be in continuous flower for well over a month (Caicco 2006c). Individual flowers within a cluster bloom in succession so that after the initial bloom, both seeds and flowers are present for extended periods (Caicco 2006c).

The Sand Mountain blue butterfly has one brood from mid July to mid-September (Austin 1998, p. 557; Shields 1977, p. 5), a period that coincides with the flowering/fruiting period of Kearney buckwheat. During the summer of 2006, scientists from the University of Nevada initiated a research effort to determine the distributional relationship between the butterfly, its host plant, and the dune shrub community. Sand Mountain blue butterflies were counted along a 17,061 ft (5,200 m) transect, with five surveys made between July 15 and August 9, 2006 (Murphy et al. 2006, p. 4). The number of Sand Mountain blue butterflies counted along the transects increased over the duration of the sampling period; because no decline was detected in the number of butterflies counted over that time period, researchers were unable to determine the precise length of the 2006 flight season (Murphy et al. 2006, p. 5 and Figure 2).

The researchers found that butterflies occurred across the entire extent of their study area, although, regardless of the sampling date, butterflies were always more abundant in the northeastern portions of the study than in the southwestern areas (Murphy et al. 2006, Figure 2). The researchers reported that ''as the season matured, multiple [Sand Mountain blue] butterflies were observed flying around nearly every buckwheat plant at nearly every site on nearly every site visit. Even individual buckwheat shrubs, which were isolated from others by as many as hundreds of meters due to devegetation from vehicle activities, were visited by [Sand Mountain] blue butterflies'' (Murphy et al. 2006, pp. 5–6).

The abundance of the butterfly was closely correlated with Kearney buckwheat flower phenology and abundance. Early in the flight season, many flowers were unopened; flowers sequentially opened as the sampling period progressed toward August, although some unopened buds remained after sampling was terminated (Murphy et al. 2006, p. 6). Butterfly abundance was strongly correlated with both the number of buckwheat inflorescences (flowers) and the abundance of the Kearney buckwheat itself (Murphy et al. 2006, p. 6 and Figure 6).

The researchers also found that the abundance of Kearney buckwheat varies considerably throughout the dune shrub habitat, with higher host plant and butterfly densities in some areas. At a number of their sample locations, Kearney buckwheat was the most abundant shrub in the dune shrub community (Murphy et al. 2006, p. 6 and Figure 5). The buckwheat was usually among the dominant shrub species both along the transect itself and within individual plots (Murphy et al. 2006, p. 6 and Figure 6).

The scientists made three conclusions from the data they collected during the 2006 flight season of the Sand Mountain blue butterfly. First, there was a large number of Sand Mountain blue butterflies—''perhaps hundreds of thousands''—a number ''substantially above a level that would indicate a need to carry out *in situ* or other actions to enhance population size above a critical minimum'' (Murphy et al. 2006, p. 7). Second, the butterfly appears to co-occur with its host plant across the entirety of the shrub's range at Sand Mountain, and the habitat quality for the butterfly increases in parallel with the shrub density from southwest to northeast across the site (Murphy et al. 2006, pp. 7–8). Third, the Kearney buckwheat occurs in a dune shrub community with abundant *Atriplex canescens* (four-wing saltbush) at lower elevations that transitions into a community with a more diverse assemblage of shrub species at higher elevations (Murphy et al. 2006, Figure 5). Along this gradient, the abundance of the Kearney buckwheat and, therefore, the density of butterflies varied in parallel (Murphy et al. 2006, p. 8).

Conservation Efforts

On August 18, 2004, the Lahontan Valley Environmental Alliance (LVEA), at the request of its board of directors, initiated a public planning effort to develop a conservation plan for the Sand Mountain blue butterfly. The LVEA was created in 1993 by an agreement among local governments and agencies to educate the public and coordinate efforts to protect the natural resources and agricultural-based economy of the communities in Churchill County. Over the past 13 years, the LVEA has worked with various interests to build knowledge and to improve communications among the communities, stakeholder groups, local governments, and State and Federal agencies involved in, or affected by, the natural resources issues of the region (LVEA 2006, p. 1).

Through the public planning effort described above, the LVEA organized and facilitated a working group to identify and address the needs of the Sand Mountain blue butterfly. This working group met regularly over the subsequent 21 months. In accordance

with the Nevada Open Meeting Law (Nevada Revised Statute, Chapter 241), all meetings were open to the public and noticed in advance with agendas posted in public facilities (Nevada Open Meeting Law Manual 2005). Meeting notes are posted on the LVEA Web site (go to *http://www.lvea.org/workgrp.htm* and click on the link for this species and then click on the link for meeting notes). Participants in the working group included representatives from the LVEA, the Bureau of Land Management (BLM), the Service, the City of Fallon, Churchill County, the Fallon Paiute Shoshone Tribe (Tribe), the Friends of Sand Mountain (FOSM), the California Off-Road Vehicle Association (CORVA), the United States Naval Air Station Fallon, and private citizens (LVEA 2006, pp. 1–2).

The purpose of this effort was to develop a Conservation Plan to provide long term protection for the Sand Mountain blue butterfly and its habitat, particularly, its host plant, Kearney buckwheat (*Eriogonum nummulare*). Final agreement on the Conservation Plan was reached on May 3, 2006, and it was signed by representatives of the BLM, the Service, the Tribe, CORVA, FOSM, and Churchill County in August and September, 2006. The Conservation Plan identifies specific actions that are necessary to: (1) Eliminate or reduce known threats, (2) incorporate species conservation measures into planning and management activities, (3) educate permittees and recreation users, and (4) monitor species status trends and habitat quality and requirements.

A designated route system, a conservation action identified in the Conservation Plan (LVEA 2006, pp. 14–19), has been implemented by the BLM at Sand Mountain to protect the habitat of the Sand Mountain blue butterfly from further damage and destruction by off-road vehicles (72 FR 12187, March 15, 2007). We used criteria specified in our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100–15115, March 28, 2003) to evaluate the certainty of effectiveness of this designated route system and determined there is a high level of certainty of effectiveness of the designated route system; consequently, we can consider this action in making a determination as to whether the Sand Mountain blue butterfly meets the Service's definition of a threatened or endangered species (Service 2007).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR Part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. In making this finding, we summarize below information regarding the status of this species in relation to the five factors provided in section 4(a)(1) of the Act. In making our 12-month finding, we have considered and evaluated all scientific and commercial information in our files, including relevant information received during the comment period that ended October 10, 2006 (71 FR 44988).

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The Sand Mountain blue butterfly is known only from Sand Mountain in Churchill County, Nevada, where it is dependent on its larval host plant, Kearney buckwheat (Austin 1998). The entire Sand Mountain dune system is estimated to extend over 2,581 ac (1,044 ha), but Kearney buckwheat is not evenly distributed throughout this entire area; Kearney buckwheat plants are typically found on peripheral, more vegetated dunes, and are particularly common on the smaller dunes to the northeast of the main dune (BLM 2006a, Map 1). In most areas, Kearney buckwheat is a component of a diverse dune shrub habitat comprised of up to 13 shrub species (BLM 2004). An estimated 1,000 ac (405 ha) of dune shrub habitat with varying amounts of Kearney buckwheat existed in 2003 (BLM 2006b, p. 2). The current distribution of the shrubs, as described above, reflects both their natural adaptation to specific site conditions and the cumulative effect of 25 years of off-road vehicle use.

A portion of the Sand Mountain dune system lies within the Sand Mountain Recreation Area (SMRA), a BLM designation that encompasses 4,795 ac (1,940 ha), and is about 1.0 mi (1.6 km) wide and 3.5 mi (5.6 km) long. The specific BLM designation of the SMRA for recreational use does not limit off-road or other forms of recreation only to this area. Furthermore, the BLM designation restricts non-recreation type activities, such as mineral mining, from occurring within the boundary of the designation.

The recreational use designation for the SMRA was first established in 1968 (BLM 1985, p. 4). By 1973, recreational use had reached 32,254 visitors annually (BLM 1985, p. 5). The first approved management plan for the area was developed more than a decade later (BLM 1985). Based on BLM information, we estimate that 40 percent, or 400 ac (162 ha) of the total of 1,000 ac (405 ha), of the Kearney buckwheat habitat occurs within the designated boundary of the SMRA (BLM 2006a, Map 1). The remaining estimated 60 percent of the Kearney buckwheat habitat occurs on BLM land outside of the eastern SMRA boundary. Until recently, off-road vehicle use was limited on only about 40 ac (16 ha) of the SMRA; no Kearney buckwheat plants occur in this limited-use area. The rest of the SMRA was open to unrestricted off-road vehicle use, as were all adjacent areas of the dune system.

As early as 1985, motorized recreation by motorcycles, four-wheel drive vehicles, three wheelers, and dune buggies, accounted for over 90 percent of the total visits to the SMRA (BLM 1985). Annual visitor use at the SMRA increased from about 16,000 persons in 1981 to about 65,000 persons in 2005 and was expected to increase again in 2006 (BLM 2006c). Visitation tends to peak on holiday weekends; for example, more than 5,000 people were present over the Labor Day weekend in 2006 (Nevada Appeal 2006, p. 1). In recent years, however, there has been a pattern of increased use on non-holiday weekends (BLM 2006c).

The BLM's Carson City Field Office has documented the expansion of an off-road vehicle route system based on an analysis of satellite imagery from 1978, 1994, 1999, and 2002; the route system has grown from about 20 mi (32 km) of off-road vehicle trails in 1981 to about 200 mi (320 km) in 2003 (BLM 2003). In addition to documenting the overall proliferation of off-road vehicle routes, the imagery clearly shows an increase in the amount of habitat fragmentation and an expansion of the off-road vehicle route system from the more accessible southern end of the main dune into dune shrub habitat adjacent to the SMRA toward the north and east that had been relatively undisturbed as recently as 1994 (BLM 2003).

Based on the trail proliferation visible in the satellite imagery from 1978 to 2003 (BLM 2003, 2004), we estimate that the shrub habitat on which the Sand Mountain blue butterfly depends may have been reduced by as much as 50 percent over the past 25 years. At most, 1,000 ac (405 ha) of dune shrub habitat remains, and within that area 500 ac (202 ha) to 600 ac (243 ha) may have Kearney buckwheat as a dominant or co-dominant shrub (BLM 2006c). We consider the entire 1,000 ac (405 ha) of dune shrub habitat to be the current range of the Sand Mountain blue butterfly; this includes non-Kearney buckwheat habitat through which the species passes, including areas devoid

of vegetation such as trails, as well as areas that support the Kearney buckwheat shrubs on which the butterfly depends for completion of its life cycle. Because the amount of Kearney buckwheat within a patch of dune shrub habitat varies, no precise data on the total number of individual Kearney buckwheat shrubs is available. We also have no reliable estimate of the historical distribution of the Kearney buckwheat at Sand Mountain other than an anecdotal report of a minor amount of vegetation having been lost along the periphery of the dune (Guiliani 1977); therefore, we consider the existing estimate of 1,000 ac (405 ha) of dune shrub habitat to approximate the historic range of the Sand Mountain blue butterfly.

The Sand Mountain dune system was included in an initial conservation assessment of blowing sand mountains prepared by The Nature Conservancy (2004). This conservation assessment ranked the long-term (defined as greater than 100 years) viability of the Sand Mountain dune ecosystem based on size, condition, and landscape context, using information from the existing literature and expert opinion (The Nature Conservancy 2004, p. 29). Each of these factors had the potential to be ranked as very good, good, fair, or poor based on specific viability criteria (The Nature Conservancy 2004, p. 35). Size was ranked as good if there was 1,236 ac-2,471 ac (500–1,000 ha) of connected habitat outside of the area heavily affected by off-road vehicle use (The Nature Conservancy 2004, p. 35). The condition rank was based on three criteria: (1) Whether invasive plants were present that could artificially stabilize dune dynamics; (2) whether other alterations affecting dune mobility, such as vegetation mortality or artificial mobilization of stable sands, were occurring; and (3), whether there was natural recruitment by key plant species. The condition was assigned a fair rank based on the fact that only the criterion regarding the presence of invasive plants was met (The Nature Conservancy 2004, p. 35). The landscape context was ranked very good based on the fact that the connection to the current sand source remained intact (The Nature Conservancy 2004, p. 35). Overall, the long-term viability of the Sand Mountain dune system was ranked marginally good, but it was noted that the ''rapid trend towards an increasingly degraded condition of this area is of considerable concern'' (The Nature Conservancy 2004, p. 35). The assessment noted that the condition of the area was primarily affected by off-road vehicle use, which was of particular concern because of the small overall size of the area and the likelihood of increasing use levels at the SMRA (The Nature Conservancy 2004, p. 36). It should be emphasized that this ranking was for the Sand Mountain dune ecosystem as a whole and none of the viability criteria evaluated specifically addressed either the status of the Sand Mountain blue butterfly or the Kearney buckwheat. The relevance of this report to the dune shrub habitat lies in its assessment that the process that supplies the source of sand to the ecosystem remains intact, and the corroboration that it provides of the threats posed by off-road vehicles and invasive weeds.

There have been several observations over the past 25 years on the effects of off-road vehicles on the Sand Mountain dune shrub habitat, on the Kearney buckwheat, and on the relationship between the buckwheat habitat and the Sand Mountain blue butterfly. These include: (1) A letter documenting the extirpation of all plant life from an area 150 ft (46 m) wide along the edge of the main dune over a period of several years (Giuliani 1977); (2) a memorandum from the Service to the BLM reporting that up to half of 58 individual Kearney buckwheat plants inspected on the south side of the mountain had been crushed and broken off at the ground surface and were either dead or in the process of resprouting from the rootstocks (Service 1994); (3) a mid-1990's report to the Service from a research scientist at the University of Nevada, Reno, stating that ''as long as the foodplant remains as abundant as it is now in the overall dune area, we saw no particular threat to the continued existence of the butterfly'' (Brussard 1995).

In our 90-day finding on the petition to list the Sand Mountain blue butterfly (71 FR 44988, August 8, 2006), we concluded that the petition provided substantial information to support the assertion that off-road vehicle use at Sand Mountain presents direct and indirect threats to the dune shrub habitat with Kearney buckwheat on which the Sand Mountain blue butterfly depends. In particular, we based our conclusion on the following—data provided by the petitioners that reliably documented a progressive loss of dune shrub habitat within the past 25 years, continuing fragmentation of dune shrub habitat, and an ongoing expansion of the route system into dune shrub habitat previously considered secure for the butterfly (BLM 2003); data that documents annual visitor use has more than doubled and the route system has expanded from 20 mi (32 km) to over 200 mi (320 km) over this time period (BLM 2003); an estimate that 1,000 to 1,600 ac (405 to 647 ha) of dune shrub habitat remained in which Kearney buckwheat is a component (BLM 2004, p. 4); and our estimate, based on satellite imagery prepared by BLM (2003), that about 50 percent of the dune shrub habitat within the species current range may have been destroyed or altered over this 25-year time span.

The scientific literature documents the effects of off-road vehicles on terrestrial habitats in arid environments, including sand dunes. Effects include significant reductions in the number, density, and cover of plants, including shrubby perennials (Bury and Luckenbach 1983) and direct impacts on desert vegetation (Stebbins 1995; Lathrop 1983; Lathrop and Rowlands 1983). While none of these citations provides specific evidence of a direct significant threat to the Sand Mountain blue butterfly, the papers by Bury and Luckenbach (1983, pp. 211–213), Lathrop (1983, pp. 157–164), Lathrop and Rowlands (1983, pp. 138–141, 144–146), and Stebbins (1995, pp. 471–472) do provide documentation that off-road vehicles can damage and destroy plants and result in significant decreases in plant numbers, density, and cover, including shrubby perennials at various sites in the western North American deserts. Specific observations of such impacts at Sand Mountain have been reported previously (Guiliani 1977; Service 1994; The Nature Conservancy 2004, p. 36; BLM 2006e).

The scientific literature provides documentation that natural recovery rates of perennial vegetative cover damaged by off-road vehicles in arid environments can take decades and, in some cases, may require centuries (Lathrop and Rowlands 1983; Kockelman 1983; Webb and Wilshire 1983). The papers by Lathrop and Rowlands (1983, p. 143) and Kockelman (1983, p. 3) provide a timeframe for understanding natural recovery rates of habitats damaged by off-road vehicle use in arid environments. We previously found that these studies provided reliable documentation that even if off-road vehicle use were to be eliminated from Sand Mountain, natural recovery of the Kearney buckwheat habitat may take decades, a timeframe that might pose an indirect threat to the long-term viability of an obligate butterfly species that must reproduce annually and relies on the buckwheat as a host plant. We now have evidence, however, from the first comprehensive assessment of the status of the Sand Mountain blue butterfly to indicate that

a large viable population of the species exists despite the past loss of habitat; moreover, the presence of butterflies at even small, relatively isolated patches of Kearney buckwheat suggests that the butterfly is not particularly sensitive to habitat fragmentation (Murphy et al. 2006, pp. 5–6).

Furthermore, as noted in the Biology and Distribution section, since the publication of the 90-day finding, we have obtained new information on the abundance and status of the Sand Mountain blue butterfly and the potential threats of habitat loss and fragmentation to the species. Researchers collected data along several permanent transects installed throughout the distribution of the dune shrub habitat at Sand Mountain from July 15 through August 9, 2006 (Murphy et al. 2006, pp. 4–5). The scientists estimated that hundreds of thousands of adult Sand Mountain blue butterflies may have emerged during the 2006 flight season (Murphy et al. 2006, p. 7). Adult butterflies were associated with nearly all Kearney buckwheat shrubs along the transects and butterflies were distributed across the entire available habitat area, even with individual buckwheat shrubs isolated from others by hundreds of meters (Murphy et al. 2006, p. 6).

The scientists concluded the Sand Mountain blue butterfly numbers were ''substantially above a level that would indicate a need to carry out in situ or other actions to enhance population size above a critical minimum'' (Murphy et al. 2006, p. 7). Annual population numbers may vary considerably depending on local weather conditions, and the researchers note that the large population in 2006 may represent an atypical spike in the butterfly population (Murphy et al. 2006, p. 9). However, even if this number represents an upper population estimate, we believe that the very large number of butterflies observed during the recent survey clearly shows that the remaining Kearney buckwheat habitat is currently sufficient to support a viable population of the Sand Mountain blue butterfly.

Although sufficient habitat remains to support a robust population of the Sand Mountain blue butterfly (Murphy et al. 2006, p. 7), researchers have cautioned that ''the sizable Sand Mountain blue population notwithstanding, continued degradation of the shrub community and losses of Kearney buckwheat will ultimately lead to the elimination of the butterfly'' (Murphy et al. 2006, p. 9). To reduce the significance of the threat posed to the Sand Mountain blue butterfly by continued degradation of the shrub community and losses of Kearney buckwheat, on December 12, 2006, the BLM implemented an emergency restriction on motorized use on 3,985 ac (1,612 ha) of land to prevent further adverse effects on the habitat of the Sand Mountain blue butterfly (BLM 2006b); the closure notice was published in the **Federal Register** on March 15, 2007 (72 FR 12187). This action, which reduces the route system both within and outside of the SMRA from an estimated 200 mi (320 km) to 21.5 mi (34.4 km), has returned the route mileage to about the 1980 level. The route designation system adopted by BLM is consistent with the Conservation Plan (LVEA 2006) and the restrictions are described by BLM as necessary to prevent further adverse effects to the habitat of the Sand Mountain blue butterfly (72 FR 12187). The route designation system is specifically designed to reduce threats from recreational use, weed infestation, fire, and the reduction of site potential, thereby furthering the objectives of eliminating off-road vehicle incursions into dune shrub and butterfly habitat; preventing route increases in dune shrub habitat; minimizing shrub damage and loss; and allowing for habitat regeneration and restoration (LVEA 2006, p. 15). The emergency restriction will remain in effect until the Resource Management Plan (RMP) has been updated to address the long-term management of the wildlife, cultural, vegetation, and recreational resources in the area or until the Field Office Manager determines it is no longer needed (BLM 2006b, p. 1; 72 FR 12187, March 15, 2007). Every indication we have from the BLM at both the field office and state office level is that the emergency restriction will remain in place until made permanent through an amendment to the RMP. The RMP must be updated in compliance with the Federal Land Management and Policy Act, the National Environmental Policy Act, and other applicable laws and policies which have, among other requirements, opportunity for public and agency review and comment. Under the terms of the Conservation Plan monitoring of compliance with the designated route system will continue and results will be reviewed every six months; areas in which non-compliance exceeds a specified threshold will be fenced (LVEA 2006, p. 60).

The Conservation Plan also includes increased law enforcement to ensure compliance in the use of the designated route system, especially on heavy use weekends and randomly at other times. Through an agreement with Churchill County, which is a party to the Plan, local law enforcement staff will be used in the camping areas to allow BLM Park Rangers to patrol the route system and other areas (LVEA 2006, p. 20). Further, any person who fails to comply with the BLM restriction order may be subject to imprisonment for not more than 12 months or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both (BLM 2006b, p. 3; 72 FR 12187, March 15, 2007). A handout was given to recreational users over Labor Day weekend, 2006, informing them of the completion and approval of the Conservation Plan, the upcoming mandatory route system, and the importance of demonstrating success in protecting the habitat for the Sand Mountain blue butterfly (BLM 2006d). A variety of additional public education activities are provided for in the Conservation Plan, including interpretive, cautionary and regulatory signage throughout the SMRA and dune system, as well as education pamphlets, brochures, and information available on Web sites and other forms of media (LVEA 2006, p. 21–24).

Implementation of the limited off-road vehicle route system is already occurring. We have evaluated the certainty of effectiveness of the designated route system using criteria specified in PECE (68 FR 15115, March 28, 2003). Based on our evaluation, we have determined that this conservation action satisfies all of the PECE criteria for the certainty of effectiveness (Service 2007). We conclude that the off-road vehicle route system is sufficiently certain to be implemented and effective so as to have reduced the present and future threat of destruction, modification, or curtailment of the habitat or range of the Sand Mountain blue butterfly to a level such that off-road vehicle impacts to habitat are not a basis for finding that listing is warranted.

Other components of the Conservation Plan have also been initiated related to research (LVEA 2006, pp. 27–28). These include mapping of current Kearney buckwheat and invasive weeds distribution; remote sensing of habitat characteristics, trends, and route analyses; studies of the Sand Mountain blue butterfly population status and habitat requirements; population dynamics of the Kearney buckwheat; and Kearney buckwheat propagation and transplantation studies. Kearney buckwheat habitat and invasive weeds mapping and remote sensing analysis of habitat characteristics, trends, and route analyses have been in progress for several years. The BLM has secured funding through grants to purchase additional imagery to continue

the trend analysis in 2006, 2009, and 2012 (LVEA 2006, p. 28). Research on the population status of the butterfly was initiated during the 2006 adult flight season by scientists from the University of Nevada, Reno, with funding through the Nevada Biodiversity Initiative; these data provide a baseline against which future fluctuations in the butterfly population can be compared (Murphy et al. 2006). Pilot studies of the population dynamics of the Kearney buckwheat have been initiated (LVEA 2006, p. 27), and seed of the Kearney buckwheat has previously been collected through the BLM Seeds of Success program. Propagation studies using these seeds, and other seeds to be collected on site, are to be conducted by the Natural Resource Conservation Service's newly established Fallon Plant Materials Center, which will also conduct transplantation studies of propagated seedlings into disturbed habitats at Sand Mountain (Tonenna 2006). While we did not rely on them making this finding, we recognized that these research components will both inform and facilitate efforts to recover damaged butterfly habitat at Sand Mountain as well as contribute to sound scientific data for future management actions.

In our 90-day finding, we addressed the claim by the petitioners that the constant disruption of the soil surface makes it difficult or impossible for seeds of the Kearney buckwheat to germinate and for seedlings to establish and concluded that the petitioners had provided no documentation for this claim (71 FR 44991). The Service has since made field visits to Sand Mountain and, while we have no quantitative data on this matter, we observed an absence of Kearney buckwheat seedlings in areas of high off-road vehicle use. We also observed numerous Kearney buckwheat seedlings in areas that received little, if any, off-road vehicle use (Caicco 2006c). These observations are consistent with previous reports (Tonenna 2003 as cited in The Nature Conservancy 2004, p. 37). We believe, based on these observations, that the constant disruption of the sand surface in heavily used areas may interfere with the establishment of Kearney buckwheat and could potentially pose a long-term threat to shrub regeneration and, therefore, to the long-term viability of the butterfly itself. However, the restriction of off-road vehicle recreation to the designated route system substantially reduces the magnitude and imminence of the threat to the regeneration of Kearney buckwheat. As described above, sufficient habitat remains at Sand Mountain to support a large population of the Sand Mountain blue butterfly, and the reduction in the level of threat due to the designated route system, over the long-term, ensures that natural shrub regeneration and/or active restoration will maintain sufficient habitat to ensure the viability of the Sand Mountain blue butterfly.

Although not identified as a threat by the petitioners, trampling or grazing of buckwheat plants and/or seedlings by livestock was identified by the working group as a potential threat to the habitat of the butterfly, although it was acknowledged that more information was needed to determine the level of threat (LVEA 2006, pp. 11–12). Dune shrub habitat with and without Kearney buckwheat occurs within portions of two range allotments, where it comprises 1,357 ac (549 ha), or 2 percent, of the Salt Wells Allotment, and 331 ac (134 ha), or 0.5 percent, of the Frenchmen Flat Allotment. The stocking values are set at 270 cattle and 1,626 animal unit months (AUMS) from October 15 through April 15 for Salt Wells and 403 cattle and 2,001 AUMS from October 15 through April 15 for Frenchmen Flat. We are not aware of any evidence that supports trampling or grazing as a significant threat to the Kearney buckwheat.

Summary of Factor A

Biological data on the Sand Mountain blue butterfly collected by researchers document that hundreds of thousands may have been present during the 2006 adult flight season. These data show that a large, robust population of the Sand Mountain blue butterfly remains despite the estimated loss of as much as 50 percent of its habitat. The only known threat of potential significance in the foreseeable future is the destruction by off-road vehicles of the dune shrub habitat containing the Kearney buckwheat, upon which the butterfly depends for its survival. Habitat destruction is a gradual and cumulative process that affects not only mature shrubs, but also likely disrupts their reproductive capacity by constant disturbance of the sand surface, thereby preventing seedling establishment. The shrubs, however, are long-lived and the habitat remains sufficiently extensive such that the threat to the butterfly does not cause it to be in danger of extinction nor likely to become in danger of extinction in the foreseeable future. Further, an emergency restriction on motorized use on 3,985 ac (1,613 ha) to protect the habitat of the butterfly went into effect on December 12, 2006 and a closure notice regarding these restrictions was published in the **Federal Register** on March 15, 2007 (72 FR 12187). The implementation of this emergency restriction, and the high level of certainty of its effectiveness, has substantially reduced the magnitude and significance of any long-term threat posed by off-road vehicles to the habitat and viability of the Sand Mountain blue butterfly. Therefore, we conclude that the Sand Mountain blue butterfly is not now, or in the foreseeable future, threatened by destruction, modification, or curtailment of its habitat or range.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any scientific or commercial data that indicate overutilization for commercial, recreational, scientific, or educational purposes poses a threat to the species.

Factor C: Disease or Predation

We are not aware of any scientific or commercial data that indicates either disease or predation poses a threat to the species.

Factor D: Inadequacy of Existing Regulatory Mechanisms

In our 90-day finding on the petition to list the Sand Mountain blue butterfly, we found that the petitioners had provided substantial information that existing regulatory mechanisms may be inadequate to prevent the progressive decline of the habitat on which the butterfly depends (page 44991 of 71 FR 44988, August 8, 2006). We based our determination on evidence that the public had raised the issue of the potential impacts of off-road recreational use on the invertebrate fauna of the dune system over 25 years ago (Hardy 1978); the inactivity of a monitoring plan initiated in the mid-1990's after personnel changes in both the BLM and Service; the lack of action on a 2002 proposed closure of 1,000 ac (405 ha) of dune shrub habitat by a group comprised of BLM and Service staff, representatives from conservation and off-road vehicle groups, and representatives of the Fallon-Paiute Shoshone Tribe; and the lack of compliance with a voluntary route system implemented by the BLM in 2004 that was intended to protect and restore the sand dune ecosystem.

The inadequacy of the voluntary off-road vehicle route system is well documented in a monitoring report on compliance with the encouraged route system for the period 2003–2006 (BLM 2006e). High levels of noncompliance occurred from the onset of implementation of the voluntary system,

and the number of incursions into habitat outside of the encouraged routes increased in 2006 (BLM 2006e, pp. 3–4). Multiple incursions into habitat outside of the encouraged route system typically occurred at any given point, so that the cumulative impacts were considered to be four times greater than the number of noncompliance points (BLM 2006e, p. 6.). BLM's information also indicates a strong relationship between the number of visitors and the number of noncompliance points (BLM 2006e, p. 7). Moreover, about 50 percent of all noncompliance points occurred at or near red carsonite posts installed to alert riders that travel was discouraged in areas behind the posts (BLM 2006e, p. 8). Overall, under the voluntary system 98 percent of all existing routes continued to be used and new routes were created, indicating an ongoing expansion of habitat degradation with little or no restoration of previously degraded areas (BLM 2006e, p. 13).

On December 12, 2006, the BLM implemented an emergency restriction on motorized use on 3,985 ac (1,613 ha) of land to prevent further adverse effects on the habitat of the Sand Mountain blue butterfly (BLM 2006b; 72 FR 12187, March 15, 2007). This action, which reduced the route system from an estimated 200 mi (320 km) to 21.5 mi (34.4 km), has returned the designated route mileage to about the 1980 level. The emergency restriction affects certain public lands within Sections 13, 14, 16, 21 through 24, 28, 29, 32, and 33, of Township 17 North, Range 32 East (Mt. Diablo Meridian) (72 FR 12187). This action restricts motorized vehicle use to selected existing routes that generally lie on the periphery of the Sand Mountain blue butterfly habitat, although several existing routes remain open to motorized use that cross between existing patches of dune shrub habitat; the designated routes were selected to prevent further adverse effects to the habitat of the Sand Mountain blue butterfly while maintaining recreational use at the SMRA. This action is consistent with the Conservation Plan (LVEA 2006) and is specifically designed to address threats from recreational use, weed infestation, fire, and the reduction of site potential, thereby furthering the objectives of eliminating or reducing the number of off-road vehicle incursions into dune shrub and butterfly habitat; eliminate route increase in dune shrub habitat; eliminate shrub damage and loss; and allow for habitat regeneration (LVEA 2006, p. 15). The emergency restriction will remain in effect until the Resource Management Plan has been updated to address the long-term management of the wildlife, cultural, vegetation, and recreational resources in the area or until the Field Office Manager determines it is no longer needed (BLM 2006b, p. 1; 72 FR 12187, March 15, 2007). Every indication we have from the BLM at both the field office and state office level is that the emergency restriction will remain in place until made permanent through an amendment to the RMP.

The Conservation Plan also provides for increased law enforcement, especially on heavy use weekends and randomly at other times; through an agreement with Churchill County, which is a party to the Plan, local law enforcement staff will be used in the camping areas to allow BLM Park Rangers to patrol the route system and other areas (LVEA 2006, p. 20). In addition, any person who fails to comply with this restriction order may be subject to imprisonment for not more than 12 months or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both (BLM 2006b, p. 3; 72 FR 12187, March 15, 2007). A handout was given to recreational users over Labor Day weekend, 2006, informing them of the completion and approval of the Conservation Plan, the upcoming mandatory route system, and the importance of demonstrating success in protecting the habitat for the Sand Mountain blue butterfly (BLM 2006d).

The Conservation Plan includes provisions for regular reporting on progress of implementation and effectiveness of various actions taken pursuant to the plan (LVEA 2006, p. 30). This includes provisions for regularly scheduled meetings of the parties to the plan, at which an evaluation of the implementation progress and effectiveness of the plan (including the route system and its enforcement) will be reviewed and, if necessary, modifications made and adaptive management actions initiated. The first meeting of the parties since the closure notice was put into effect occurred on March 15, 2007. Implementation progress was reviewed, the signage and fencing strategy and funding considerations were discussed, and the next meeting was scheduled for May 10, 2007. The agenda for the latter meeting will include further discussion of the fencing strategy and the scheduling of a site visit to discuss fence placement along key route segments. At every six-month meeting, the implementation success of the conservation actions will be evaluated, the success or failure of the objectives of each strategy will be determined and an adaptive management plan will be triggered, if appropriate. At annual meetings, the long-term monitoring will be analyzed and continuation or modification of the plan will be determined, based on the triggers for overall plan success. We note also that BLM has demonstrated their commitment to monitor the situation and to take appropriate action, as illustrated by BLM's adoption of the mandatory route system based on monitoring of the voluntary route system that previously was in place.

As described above (see discussion of Factor A), we reviewed the route system in accordance with PECE and found that all of the criteria for certainty of effectiveness are met, and concluded there is a high level of certainty of effectiveness of the route system (Service 2007). We conclude that the emergency restriction on motorized vehicle use has established an adequate regulatory mechanism to protect the existing Kearney buckwheat habitat which, as noted above, remains sufficient to support a large, viable population of the Sand Mountain blue butterfly (Murphy et al. 2007, p. 7).

Summary of Factor D

Unrestricted off-road vehicle recreation at Sand Mountain has been the primary cause of the gradual process of destruction and modification of the dune shrub habitat of the Sand Mountain blue butterfly over the past two decades and remains the only threat of potential significance to the species in the foreseeable future. However, we have determined that the implementation and effectiveness of a mandatory, enforceable route system that restricts travel within the dune shrub habitat adequately addresses this potential threat by eliminating or greatly reducing further habitat deterioration and allowing for habitat recovery within closed areas. We believe that the strengthened regulatory approach and increased emphasis on encouraging compliance with the mandatory route system has substantially reduced the magnitude and imminence of the threat of off-road recreational use to the Kearney buckwheat habitat, which currently remains sufficient to support a large, viable population of the Sand Mountain blue butterfly. Therefore, we have determined that the inadequacy of existing mechanisms does not currently constitute a threat to the Sand Mountain blue butterfly.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Several other natural or manmade factors have been identified as potential

threats to the Sand Mountain blue butterfly, including invasive weeds (LVEA 2006, p. 10; The Nature Conservancy 2004, pp. 49–52; Murphy et al. 2006, p. 7 and Figure 7), wildfire (LVEA 2006, pp. 13–14; Murphy et al. 2006, p. 9); climate change (LVEA 2006, p. 14; Murphy et al. 2006, p. 9), camping (LVEA 2006, p. 11), hiking (LVEA 2006, p. 14), horseback riding (LVEA 2006, p. 14), pollution (LVEA 2006, p. 14), and military action (LVEA 2006, p. 14). In addition, in our 90-day petition finding, we acknowledged that while large fluctuations in size typical of insect populations may make a species with an extremely limited distribution, such as the Sand Mountain blue butterfly, more susceptible to extinction (Ehrlich 1992), we are aware of no information that large population fluctuations have occurred, or are likely to occur for this species. (71 FR 44992, August 8, 2006). Although researchers have acknowledged that the large population observed in 2006 may have been an anomaly, which could have obscured normal patterns of butterfly distribution that might suggest a more significant threat to the species than is indicated by the 2006 field observation (Murphy et al. 2006, p. 9), they also concluded that the Sand Mountain blue butterfly numbers were ''substantially above a level that would indicate a need to carry out in situ or other actions to enhance population size above a critical minimum'' (Murphy et al. 2006, p. 7). Based on this assessment, we believe that the population will remain viable into the foreseeable future.

Of the potential threats cited above, we consider the interrelated factors of invasive weeds and fire to be the most significant. The primary invasive weeds of concern at Sand Mountain are *Salsola tragus* (Russian thistle) and *Bromus tectorum* (cheatgrass). Large patches of both species are present in areas along the periphery of the sand dunes, principally in areas where livestock water tanks and camping are permanently located (LVEA 2006, p. 10). Researchers did not find cheatgrass to be a dominant species along transects in 2006 (Murphy et al. 2006, Figure 5). The seeds of these invasive weeds can be spread by wind, cattle, and off-road vehicle transport (LVEA 2006, p. 11). There is no evidence that these annual weeds are capable of artificially stabilizing the dune systems at Sand Mountain (The Nature Conservancy 2004, p. 53), and we do not consider artificial stabilization of the dune system to be a significant threat to the habitat of the Sand Mountain blue butterfly. We are unable to assess the significance of off-road vehicles as a vector for weed transport because of lack of data, although they likely facilitate weed establishment through surface disturbance.

Because both cheatgrass and Russian thistle are annual plants, we do not believe that they pose a significant direct competitive threat to the Kearney buckwheat, a long-lived shrub. Cheatgrass and Russian thistle, however, do create a substantial fuel load that may increase both the likelihood and frequency of wildfire. Wildfires have not occurred over the past 25 years of record at Sand Mountain (LVEA 2006, p. 13), and wildfires likely have a low natural frequency in sparsely vegetated dune ecosystems. The Sand Mountain ecosystem was rated in fair condition based on the absence of known dune-stabilizing invasive plants (The Nature Conservancy 2004, p. 35). After a subsequent visit by a few assessment team members, however, it was noted that the abundance of invasive plants was much higher than assumed by the team during the analysis, and it was possible that they might have downgraded the rating to poor if they had been aware of this information (The Nature Conservancy 2004, p. 37). Vegetation data collected along transects by researchers during the 2006 field season, however, show that both the presence and abundance of Russian thistle vary spatially, and the invasive weed is absent in many areas; nevertheless, the researchers found fewer butterflies where Russian thistle was abundant (Murphy et al. 2006, p. 7, Figure 7). This observation clearly derives from the strong correlation between numbers of the butterfly and the number of buckwheat shrubs and their inflorescences (Murphy et al. 2006, Figure 4). Transect data presented by the researchers appear to show that greater abundance of Russian thistle (and lesser abundance of Kearney buckwheat) also correlates with a greater abundance of several other plants, including four-wing saltbush, *Oenothera deltoides* (desert evening-primrose), *Rumex venosus* (winged dock), and an unidentified species of wild buckwheat (Murphy et al. 2006, Figure 5). None of these plants are abundant in areas along the transects where the Kearney buckwheat is abundant (Murphy et al. 2006, Figure 5), suggesting the possibility that the particular habitats where these species, including Russian thistle, are dominant may not provide suitable habitat for the Kearney buckwheat.

We conclude, therefore, that annual invasive weeds, the combustible fuels they create, and the potential for wildfires to occur and increase in frequency, thereby promoting the increase and establishment of invasive weeds, all pose risks to at least some of the habitat of the Sand Mountain blue butterfly. The extent and magnitude of the risks, however, is unclear because we have no quantitative information on the overall distribution and abundance of invasive weeds, nor are any data available on the response of the Kearney buckwheat to fire. The occurrence of the buckwheat in a habitat in which fire is naturally rare suggests that it is not fire-tolerant; the species, however, has an extensive branching caudex (root crown) from a deep woody taproot (Reveal 2002, p. 1), from which it has been observed to resprout after physical damage to its above-ground shoot (Service 1994). It may, therefore, be intolerant of fire but capable of surviving it. At this time, therefore, we are aware of no substantial evidence that invasive plants or fire currently pose a significant threat to the habitat or viability of the Sand Mountain blue butterfly.

Of the remaining potential threats to the Sand Mountain blue butterfly, camping was identified as such primarily because it constitutes an additional source of invasive weeds (LVEA 2006, p. 11) and is subject to the same considerations discussed above. In addition, the only campground is located in an area where Kearney buckwheat once occurred and the butterfly was first discovered (Austin 1998), but neither the buckwheat nor the butterfly occur there today so the campground itself no longer poses a direct threat to the species. Climate change is also a potential threat to the species (LVEA 2006, p. 14; Murphy et al. 2006, p. 9), but there is no available evidence to evaluate the imminence or magnitude of this threat. There is also no evidence that pollution or military action pose a significant threat to the species or its habitat, and their level was considered so low that they were not considered in the Conservation Plan (LVEA 2006, p. 14).

Summary of Factor E

Annual invasive weeds, the combustible fuels they create, and the potential for wildfires to occur and increase in frequency, thereby promoting the increase and establishment of invasive weeds all pose a threat to at least some of the habitat of the Sand Mountain blue butterfly. The extent and magnitude of this threat, however, is unclear because we have no quantitative information on the overall distribution and abundance of invasive

weeds, nor are there any data available on the response of the Kearney buckwheat to fire. No substantial evidence exists to support a conclusion that annual weeds or fire currently pose a significant threat to the habitat or viability of the Sand Mountain blue butterfly.

Finding

We assessed the best available scientific and commercial information regarding threats faced by the Sand Mountain blue butterfly. We have reviewed the petition, information available in our files, and information submitted to us during the public comment period following our 90-day petition finding (71 FR 44988; August 8, 2006). We also consulted with recognized butterfly experts and Federal land managers, and arranged for researchers to initiate field studies to assess the status of the subspecies and establish baseline data against which future changes in the butterfly population can be compared.

Based on counts made during the 2006 flight season, hundreds of thousands of adult Sand Mountain blue butterflies may have been present, a number sufficiently large for us to find that habitat loss to date does not pose a significant threat to the subspecies. The only known threat of potential future significance to the habitat of the Sand Mountain blue butterfly is the gradual destruction by off-road vehicles of the dune shrub habitat containing Kearney buckwheat, on which the butterfly depends, and associated impacts to the reproductive success of the shrub the constant disruption of the sand surface which interferes with seedling establishment. The magnitude and imminence of the threat posed by off-road vehicle recreation to the habitat of the butterfly, however, has been reduced by an emergency restriction that limits motorized vehicles to a designated route system that went into effect on December 12, 2006. We believe that implementation of this emergency restriction ensures that further habitat destruction is prevented and, over the long-term, natural shrub regeneration and active restoration will ensure that the Sand Mountain blue butterfly remains viable. There is no evidence that, based on the available information, other factors identified as potential threats, including large population fluctuations, invasive weeds, wildfire, climate change, camping, hiking, horseback riding, pollution, and military activities pose a significant threat to the Sand Mountain blue butterfly.

The butterfly exists in only one population, and we consider the entire 1,000 ac (405 ha) of dune shrub habitat to be the current range of the Sand Mountain blue butterfly; this includes non-Kearney buckwheat habitat through which the species passes, including areas devoid of vegetation such as trails, as well as areas that support the Kearney buckwheat shrubs on which the butterfly depends for completion of its life cycle. As described above, researchers have found the butterfly appears to co-occur with its host plant, Kearney buckwheat, across the entirety of the shrub's distribution at Sand Mountain, even within small, relatively isolated patches of the shrub (Murphy et al. 2006, pp. 5–8). We believe, therefore, that the current range of the Sand Mountain blue butterfly approximates its historical range, although only 50 to 60 percent of the entire area of dune shrub habitat is estimated to support substantial numbers of the Kearney buckwheat on which the butterfly depends for completion of its life cycle. Because the area in which the population exists is so small, and there are no unique features of the area, there are no areas within the species' range that are significant portions of the range. In addition, the threats to the species are being addressed across its range, as described above, such that no area continues to face significant threats. Therefore, we find that the Sand Mountain blue butterfly is not threatened or endangered in all or a significant portion of its range, and listing it under the Endangered Species Act is not warranted at this time.

We will continue to assess the status of the butterfly by working with the BLM, other parties to the Conservation Plan, research scientists, and other individuals or groups interested in contributing to the conservation of this species. We will particularly focus on the designated route system and the effectiveness of this conservation action in eliminating and reducing the threats identified to the butterfly over the foreseeable future. In particular, we will closely follow the monitoring results of recreational user compliance with the designated route system.

As specified in PECE (68 FR 15114): ''If we make a decision not to list a species or to list the species based in part on the contributions of a formalized conservation effort, we will track the status of the effort including the progress of implementation and effectiveness of the conservation effort. If any of the following occurs: (1) A failure to implement the conservation effort in accordance with the implementation schedule; (2) a failure to achieve objectives; (3) a failure to modify the conservation effort to adequately address an increase in the severity of a threat or to address other new information on threats; or (4) we receive any other new information indicating a possible change in the status of the species, then we will reevaluate the status of the species and consider whether initiating the listing process is necessary. Initiating the listing process may consist of designating the species as a candidate species and assigning a listing priority, issuing a proposed rule to list, issuing a proposed rule to reclassify, or issuing an emergency listing rule.''

We request that you submit any new information concerning the status of, or threats to, this species to our Nevada Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the species and encourage its conservation. If an emergency situation develops for this or any other species, we will act to provide immediate protection.

References Cited

A complete list of all references cited herein is available, upon request, from the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is the Nevada Fish and Wildlife Office (see **ADDRESSES**).

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: April 26, 2007.

Randall B. Luthi,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E7–8330 Filed 5–1–07; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 72, No. 84

Wednesday, May 2, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development: Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before July 2, 2007.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0520.

Form No.: AID 1420–17.

Title: Contract Employee Biographical Data Sheet.

Type of Review: Reinstatement.

Purpose: The U.S. Agency for International Development (USAID) is authorized to make contracts with any corporation, international organization, or other body of persons in or outside of the United States in furtherance of the purposes and within limitations of the Foreign Assistance Act (FAA). The information collections requirements placed on the public are published in 48 CFR chapter 7, and include such items as the Contractor Employee Biographical Data Sheet and Performance and Progress Reports (AIDAR 752.7026). These are all USAID unique procurement requirements. The pre-award requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information collection requirements during the post-award period are based on the need to administer public funds prudently.

Annual Reporting Burden:

Respondents: 14,939.

Total annual responses: 41,573.

Total annual hours requested: 63,152 hours.

Dated: April 23, 2007.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 07–2156 Filed 5–1–07; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

Summary: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David—Rostker@omb.eop.gov* or fax to 202–395–7285. Copies of submission may be obtained by calling (202) 712–1365.

Supplementary Information:

OMB Number: OMB 0412–0566.

Form Number: AID 200–1.

Title: PVO Classification Form.

Type of Submission: Reinstatement.

Purpose: The U.S. Agency for International Development (USAID) requires all private voluntary organizations (PVOs) that wish to be eligible to compete for most forms of foreign economic assistance administered by USAID to register with the Agency. Registration provides a resource for USAID officials to access financial and program information on PVOs. The PVO Registry is a central clearinghouse for information on PVOs working in countries where elsewhere the U.S. Government would not have knowledge of the activities. To confirm the data is collected in a formalized and consistent manner, USAID has developed the Classification Form's list of sectors and countries that will show where qualified and interested PVOs registered with USAID are working.

Annual Reporting Burden:

Respondents: 594.

Total annual responses: 594.

Total annual hours requested: 132 hours.

Dated: April 25, 2007.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 07–2157 Filed 5–1–07; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to

minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before July 2, 2007.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov*.

SUPPLEMENTARY INFORMATION:

OMB NO: OMB 0412—New.

Form No.: N/A.

Title: Invoice/Payment Request, Contractor's Release Statement, and Subcontractor Payment Information-Invoice/Payment Request Attachment.

Type of Review: New.

Purpose

These documents are to be used by construction company prime contractors and sub-contractors during the performance of a duly executable contract. A duly executable contract arrangement may be in the form of a contract, task order, modification, letter contract, and written or oral orders. The information provided will be evaluated by USAID, cognizant technical officer, agency finance personnel, or an authorized contracting officer's representative for contractor progress payments during proper execution of construction projects. The information provided may also be used by a surety, insurance, or bonding company for progress payment purposes when the prime construction contractor fails in the performance of a contract, task order, modification, letter contract, or written and oral orders. The information provided in the Invoice/Payment Request form, Contractor's Release Statement, and Subcontractor Payment Information-Invoice/Payment Request Attachment may also be used by a third party construction company for progress payments when the prime construction contractor fails to execute or fails in the performance of a construction contract, task order, modification, letter contract, and written or oral orders.

Annual Reporting Burden:

Respondents: 1,000.

Total annual responses: 1,000.

Total annual hours requested: 600.

Dated: April 23, 2007.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 07–2158 Filed 5–1–07; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 27, 2007.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA—Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Notice of Funds Availability—Community Outreach and Assistance Partnership Program.

OMB Control Number: 0563–0066.

Summary of Collection: The Federal Crop Insurance Act of 2002 authorizes the Federal Crop Insurance Corporation (FCIC) to enter into partnerships with public and private entities for the purpose of increasing the availability of risk management tools for producers of agricultural commodities. The Risk Management Agency has developed procedures for the preparation, submission and evaluation of applications for partnership agreements that will be used to provide outreach and assistance to under served producers, farmers, ranchers and women, limited resource, socially disadvantaged.

Need and Use of the Information: Applicants are required to submit materials and information necessary to evaluate and rate the merit of proposed projects and evaluate the capacity and qualification of the organization to complete the project. The application package should include: a project summary and narrative, a statement of work, a budget narrative and OMB grant forms. RMA and review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 967.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. E7–8363 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Antibacterial Resources, Inc. of El Paso, Texas, an exclusive license to U.S. Patent No. 5,656,037, ''Reaction Products of Magnesium Acetate and Hydrogen Peroxide for Imparting Antibacterial Activity to Fibrous Substrates'', issued on August 12, 1997.

DATES: Comments must be received by June 1, 2007.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Antibacterial Resources, Inc. of El Paso, Texas has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E7–8365 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Osprey Biotechnics Inc. of Sarasota, Florida, an exclusive license to U.S. Patent No. 6,447,770, ''Biocontrol Agents for Take-All'', issued on September 10, 2002.

DATES: Comments must be received by June 1, 2007.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Osprey Biotechnics Inc. of Sarasota, Florida has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. E7–8385 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2007–0010]

Notice of Request for Extension of a Currently Approved Information Collection (Procedures for the Notification of New Technology)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request an extension of an approved information collection regarding the procedures for notifying the Agency about new technology.

DATES: Comments on this notice must be received on or before July 2, 2007.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

<bullet≤ *Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

<bullet≤ *Electronic mail: fsis.regulationscomments@fsis.usda.gov.*

<bullet≤ *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulation.gov* and in the ''Search for Open Regulations'' box, select ''Food Safety and Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select FDMS Docket Number FSIS–2007–0010 to submit or view public comments and to view supporting and related materials available electronically.

All submissions received by mail or electronic mail must include the Agency name and docket number. All comments submitted in response to this document, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments will also be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations—&—policies/regulations—directives—&—notices/index.asp.*

FOR ADDITIONAL INFORMATION: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Procedures for the Notification of New Technology.

OMB Number: 0583–0127.

Expiration Date of Approval: 08/31/2007.

Type of Request: Extension of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting extension of an approved information collection addressing paperwork and recordkeeping requirements regarding new technology.

FSIS has established procedures for notifying the Agency of any new technology intended for use in official establishments and plants (68 FR 6873).

To follow the procedures, establishments, plants, and firms that manufacture and sell technology to official establishments and plants notify the Agency by submitting documents describing the operation and purpose of the new technology. The documents should explain why the new technology will not: Adversely affect the safety of the product, jeopardize the safety of Federal inspection personnel, interfere with inspection procedures, or require a waiver to a regulation. In addition, if the new technology could adversely affect the safety of the product, jeopardize the safety of Federal inspection personnel, interfere with inspection procedures, or require a waiver to a regulation, submitters are to provide a protocol for an in-plant trial as part of a pre-use review. FSIS expects the submitter of a protocol to provide data to the Agency throughout the duration of the in-plant trial.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of 29 hours per response.

Respondents: Official establishments and plants; firms that manufacture or sell technology.

Estimated No. of Respondents: 290.

Estimated No. of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 8,400 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' 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 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 both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at *http://www.fsis.usda.gov/regulations/2007—Notices—Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/news—and—events/email—subscription/* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on: April 26, 2007.

David P. Goldman,

Acting Administrator.

[FR Doc. E7–8341 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Gunnison Basin Federal Lands Travel Management Plan

AGENCIES: Forest Service, USDA, Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

DATES: Comments concerning the scope of analysis must be received on or before August 31, 2007. The draft environmental impact statement is expected to be released in February 2008 and the final environmental impact statement is expected in August 2008.

ADDRESSES: Send written comments to Gunnison Travel Management, GMUG National Forests, 2250 Highway 50, Delta, CO 81416.

FOR FURTHER INFORMATION CONTACT: Anne Janik, Public Involvement Specialist at *ajanik@fs.fed.us,* (970) 874–6637 or Gary Shellhorn, Team Leader at *gshellhorn@fs.fed.us,* (970) 874–6666.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) are to designate which roads or trails on federal lands administered by the BLM and the Forest Service within the Gunnison Field Office area and the Gunnison National Forest are open to motorized and/or mechanized travel. In so doing, both agencies will meet commitments set forth in the 2001 Gunnison Interim Travel Management Plan to further evaluate and analyze motorized travel needs on a route-by-route basis and comply with requirements of the Forest Service 2005 Travel Management Rule (36 CFR part 212) as well as policies for Public Lands found in the BLM Land Use Planning Handbook (H–1601–1). As a result of these travel management decisions, the Forest Service will produce a Motorized Vehicle Use Map (MVUM) depicting those routes on the Gunnison National Forest and the Gunnison Field Office Public lands that will remain open to motorized and/or mechanized travel. The MVUM will be the primary tool used to determine compliance and enforcement with motorized and mechanized vehicle use designations on the ground. Those existing routes and other user-created routes not designated open on the MVUM will be legally closed to motorized and mechanized travel. The decisions on motorized and

mechanized travel do not include over-snow travel or existing winter-use recreation.

Background Information: The Gunnison Interim Travel Management Plan (2001), as an interim plan, was intended to be replaced by a more definitive and comprehensive designated system of routes to be maintained and remain open for motorized travel. The Gunnison Interim Travel Plan did not address whether specific routes were needed or were not needed to provide a manageable and sustainable transportation system on the Gunnison National Forest and Gunnison Field Office Public Lands. Nor did it fully evaluate the desired use by vehicle type or season of use on a route-by-route basis. The 2001 travel plan was implemented as an interim measure intended to halt the proliferation of user-created routes and attempt to restrict motorized travel to the then existing roads and trails. The 2001 travel plan needs to be amended, changed or superseded.

In addition to the 2001 commitment by both agencies to complete further travel management planning, the Forest Service 2005 Travel Management Rule (36 CFR 212) requires each National Forest unit to complete travel management planning that will include the designation of routes open to motorized travel culminating with the completion and publication of a Motor Vehicle Use Map (MVUM). The Chief of the Forest Service has set a 4-year target to complete these initial motorized use designations that will define the MVUM.

It is understood that the BLM will also include their route-by-route designations for motorized and mechanized travel on roads and trails traversing public lands in the Gunnison Field Office area on the Forest Service MVUM.

National Forest System (NFS) lands are lands managed by the Forest Service. Public lands are lands managed by BLM. Both National Forest System lands and public lands in the Gunnison Basin will be addressed in this effort.

Proposed Action: The proposed action is to designate selected roads and trails open to motorized and/or mechanized travel (wheeled vehicles only) on the Gunnison National Forest (NFS lands) and Gunnison Area public lands (BLM). Where it is appropriate and necessary, the designations will also set specific seasons (i.e., yearlong, summer, fall-summer-spring) of use and type of use (e.g., full-sized vehicles, ATV's, motorcycles, or mountain bikes) for those routes. The Forest Service will produce a Motor Vehicle Use Map (MVUM) depicting those routes which are open to the general public for motorized and/or mechanized travel.

Possible Alternatives: Alternatives to the proposed action will be considered and evaluated. The No Action alternative would be to adopt the September 1, 2000 map of existing roads and trails as those routes open to motorized and mechanized travel. Alternatives to the Proposed Action and No Action will depict differing combinations of routes to remain open to motorized and/or mechanized travel. The Proposed Action and the alternative actions will provide a system of routes that differ from existing conditions and the No Action alternative.

Less restrictive alternatives would generally entail designating a greater number of miles of road or trail to be open for motorized and mechanized travel than the Proposed Action. Alternatives considered to be less restrictive could also include fewer constraints on season of use or vehicle types allowed on designated routes. The less restrictive alternative would generally provide for more motorized and mechanized recreational use opportunities.

More restrictive alternatives would generally entail designating fewer miles of road or trail to be open for motorized and mechanized travel than the Proposed Action or have more constraints on season of use and vehicle types using designated routes. The more restrictive alternative(s) would provide motorized and mechanized recreational opportunities yet there may be a greater emphasis on non-motorized recreational opportunities.

A consequence of designating routes open for motorized and/or mechanized travel is that those existing routes not designated as open would be identified as closed to motorized and/or mechanized travel. Road closure procedures that involve ground disturbing activities would not be a part of the Proposed Action or alternatives and would generally require separate and distinct site-specific NEPA decisions regarding the implementation aspects of road closures. The environmental consequences of having routes closed to motorized and/or mechanized travel will be evaluated in this environmental assessment.

Identification of new routes that would meet the goals and objectives for a motorized and/or mechanized transportation system on both Public lands and NFS lands will be, as appropriate, a part of this travel management planning, but would require separate, site-specific NEPA decisions to implement ground disturbing activities associated with new route construction.

Lead Agencies: The Forest Service and the BLM are joint lead agencies (CEQ § 1506.2). USDA, Forest Service, Grand Mesa, Uncompahgre, and Gunnison National Forest. USDI, Bureau of Land Management, Gunnison Field Office.

Responsible Officials: The Responsible Official for the Grand Mesa, Uncompahgre, and Gunnison National Forest is Charles Richmond, Forest Supervisor, GMUG National Forest, 2250 Highway 50, Delta, CO 81401.

The Responsible Official for the BLM Gunnison Field Office is Kenny McDaniel, Manager, Gunnison Field Office, 216 North Colorado, Gunnison, CO 81230.

Nature of Decisions To Be Made: Based on the purpose and need for the proposed action, the Forest Supervisor and the Field Office Manager will evaluate the Proposed Action and other alternatives in order to make the following decisions for the specific federal lands they have authority over:

<bullet≤ Those roads or trails that will be designated as open to the public for motorized and/or mechanized travel; and,

<bullet≤ The allowed season and/or type of use for those routes open to motorized and/or mechanized travel.

Federal land managers are directed (Executive Order 11644, 36 CFR 212, and 43 CFR 8342.1) to ensure that the use of motorized vehicles and off-road vehicles will be controlled and directed so as to protect the resources of those lands, to promote the safety of users, minimize conflicts among the various uses of the federal lands, and to provide for public use of roads and trails designated as open.

Permits or Licenses Required: No other permits or licenses are required to be obtained by either the Forest Service or the BLM to make decisions regarding motorized and/or mechanized travel on federal lands managed by the two agencies.

Scoping Process: Preliminary public involvement was initiated in the summer 2006 in an effort to educate the public and stakeholders on the objectives of travel management. The public was also asked to provide input to the Forest Service and BLM on routes they wanted to remain open and/or those routes that may be in conflict with other desired conditions sought by the public on Forest and BLM lands. This initial comment period ended in October 2006 with the agencies receiving numerous comments on individual routes, a few general comments and some area-wide

comments on travel. There were over 800 route specific comments, many of which addressed the same route(s).

This initial public input will help the Forest Service and BLM to develop a preliminary route-by-route proposed action that will be utilized in a more formal scoping process. The Forest Service and the BLM will jointly conduct the following public meetings to solicit for comments and concerns from the public and interested parties on motorized and/or mechanized travel on National Forest System (NFS) lands and Public Lands:

(1) Paonia—May 23 (Wednesday), 5:30–8 p.m.
Paonia Town Hall, 214 Grand Avenue.

(2) Gunnison—May 30 (Wednesday), 5:30–8 p.m.
Gunnison County Fairgrounds (Multi-purpose room). (Fred R. Field Western Heritage Center), 275 S. Spruce Street.

(3) Crested Butte—June 5 (Tuesday), 5:30–8 p.m.
Crested Butte Community School, 818 Red Lady Avenue.

(4) Lake City—June 6 (Wednesday), 5:30–8 p.m.
Lake City Community School (Middle/HS Wing, Room 6/8) 614 Silver.

Legal notices of those meetings and requests for comments will be published in two local newspapers; Delta County Independent for the Paonia Ranger District, and the Gunnison Country Times for the Gunnison Ranger District and BLM Gunnison Field Office.

Based on comments received as a result of this notice and after the Forest Service and BLM have conducted public meetings and afforded the public sufficient time to respond to the preliminary proposed action, the agencies will utilize the public scoping comments and concerns along with resource related input for the interdisciplinary team and other agency resource specialists to develop a set of issues to carry forward into the environmental analysis process.

Preliminary Issues: The Forest Service and BLM addressed several key issues in the 2000 Gunnison Travel Interim Restrictions Environmental Assessment which provide the agencies with a list of potential issues that can be expected to again come from the public regarding motorized and mechanized travel. The agencies have also gotten some indications of potential issues from the initial public involvement process conducted during the summer and fall of 2006. Those expected issues include:

(1) Adverse resource impacts caused by inappropriate types of vehicle use (e.g. motorized vehicles in fragile or steep terrain), proliferation of routes (e.g. parallel trails or roads, illegal travel off designated routes), and unrestricted season of use (e.g. routes open to motorized travel too long into the wet or muddy seasons).

(2) Infringement on wildlife caused by roads in important or critical wildlife habitat areas, too high of a density of roads in wildlife habitat areas, and disturbance to wildlife during critical lifecycle periods.

(3) Loss of recreational opportunity when existing routes are closed to motorized and/or mechanized travel.

(4) Loss of semi-primitive and primitive recreational opportunity if more routes or areas are open to motorized and/or mechanized travel.

(5) Failure to accommodate the fast growing number of motorized and/or mechanized users desiring to use federal lands for recreational riding of ATVs and mountain bikes.

(6) Inconsistencies between Forest Service and BLM restrictions and regulations for motorized and/or mechanized use of routes managed by those agencies.

(7) Enforcement concerns centered on whether either of the agencies have the ability to provide enforcement once decisions have been made on allowed routes and uses for motorized and/or mechanized travel.

(8) Safety concerns on routes where multiple vehicle types (e.g. full-sized trucks and cars, ATVs, motorcycles, mountain bikes) are allowed.

(9) Conflicts with landowners when routes cross private lands to access federally managed lands of the BLM and Forest Service.

(10) Jurisdictional questions regarding routes maintained by local governments or historically used by the public to access federally managed lands.

Both the Forest Service and the BLM recognize that this list of issues is not complete and will be further defined and refined as scoping continues. It is expected that a comprehensive list of key issues will be determined before the full range of alternatives is developed and the environmental analysis is begun.

Comments Requested: This notice of intent initiates the formal scoping process that guides the development of the environmental impact statement for the Gunnison Travel Management Plan.

However all comments received during the initial comment period (July to October 2006) will be brought forward into this formal scoping, and those who commented then need not comment again to have their comments considered, or to demonstrate their interest in this planning. Persons and organizations commenting during the initial scoping will be maintained on the mail list for future information about Gunnison Travel Management Planning.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for public comment. The comment period on the draft environmental impact statement will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability in the **Federal Register.** Written comments are preferred and should include the name and address of the commenter. Comments submitted for this proposed action will be considered part of the public record.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris,* 409 F. Supp. 1334, 1338 (E.D.Wis. 1980). Because of these court rulings, it is very important those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternative formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the

National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 30, 2007.

Charles S. Richmond,

Forest Supervisor.

Kenny McDaniel,

Manager, Gunnison Field Office.

[FR Doc. 07–2153 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Federal Lands Recreation Enhancement Act Forest Service, (Title VIII, Pub. L. 108–447)

AGENCY: Pacific Northwest Region, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pacific Northwest Recreation Resource Advisory Committee will meet in Portland, OR. The purpose of the meeting is to review and provide recommendations on recreation fee proposals for facilities and services offered on lands managed by the Forest Service and Bureau of Land Management in Oregon and Washington, under the Federal Lands Recreation Enhancement Act of 2004.

DATES: The meeting will be held on May 16, 2007 from 8:30 a.m.–5 p.m. and May 17, 2007 from 8:30 a.m.–4 p.m. A public input session will be provided at 10:30 a.m. on both days of the meeting. Comments will be limited to three minutes per person. The Designated Federal Official has discretion to not convene the committee on May 17, 2007, if necessary.

ADDRESSES: The meeting will be at the Residence Inn by Marriott, Lloyd Center, 1710 NE Multnomah St., Portland, Oregon 97232. Send written comments to Dan Harkenrider, Designated Federal Official for the Pacific Northwest Recreation RAC, 902 Wasco Street, Suite 200, Hood River, OR 97031, 541–308–1700 or *dharkenrider@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Dan Harkenrider, Designated Federal Official, 902 Wasco Street, Suite 200, Hood River, OR 97031, 541–308–1700.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Recreation RAC discussion is limited to Forest Service and Bureau of Land Management staff and Recreation RAC members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who have made written requests by May 9, 2007 to the Designated Federal Official will have the opportunity to address the Committee during the meeting on May 16 and 17, 2007 at 10:30 a.m.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: April 26, 2007.

Liz Agpaoa,

Acting Regional Forester, Pacific Northwest Region.

[FR Doc. 07–2154 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Resume the Agricultural Labor Survey and Farm Labor Reports

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of resumption of data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to resume a currently approved information collection, the Agricultural Labor Survey, and its associated publication.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Expiration Date of Approval: April 30, 2009.

Type of Request: To resume a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides quarterly statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked are used to estimate agricultural productivity; wage rates are used in the administration of the H–2A Program and for setting Adverse Effect Wage Rates. Survey data are also used to carry out provisions of the Agricultural Adjustment Act. This collection was suspended on February 1, 2007 due to budget constraints. NASS will resume this information collection as of May 2, 2007, and will publish the Farm Labor reports for April, July, and October 2007 as originally scheduled.

Authority: These data are collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Signed at Washington, DC, April 4, 2007.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E7–8381 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Suspend Portions of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of suspension of data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to suspend portions of a currently approved information collection, the Agriculture Resource Management, Chemical Use, and Postharvest Chemical Use Surveys. The Fruit Chemical Use Survey and Postharvest Chemical Use Survey are being suspended, along with their associated publications.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agriculture Resource Management, Chemical Use, and Postharvest Chemical Use Surveys.

OMB Control Number: 0535–0218.

Expiration Date of Approval: September 30, 2008.

Type of Request: To suspend portions of a currently approved information collection.

Abstract: One of the primary objectives of the National Agricultural Statistics Service is to provide high quality and timely estimates about the nation's food supply and environment. In the Fruit Chemical Use Survey and the Postharvest Chemical Use Survey data are collected regarding chemical usage on fruit and the types and amounts of pesticides used on selected

commodities after harvest and before shipping to the consumer. Information from these data collection efforts is used extensively by government agencies in planning, farm policy analysis, scientific research, and program administration. NASS will suspend Fruit Chemical Use and Postharvest Chemical Use data collection as of May 2, 2007. NASS will not publish the two associated reports: The Agricultural Chemical Usage Postharvest Applications report previously scheduled for March 26, 2008 and the Agricultural Chemical Usage 2007 Fruit Summary report scheduled for July 30, 2008. The Agriculture Resource Management surveys portion of the information collection will continue unaffected.

Authority: These data are collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: There will be no further reporting burden for the annual collection of Postharvest Chemical Use or the biennial collection of Fruit Chemical Use data.

Signed at Washington, DC, April 4, 2007.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E7–8382 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of re-establishment of the Advisory Committee for Agriculture Statistics.

SUMMARY: The U.S. Department of Agriculture (USDA) has re-established the Advisory Committee for Agriculture Statistics. Effective October 1, 1996, responsibility for the census of agriculture program was transferred to the National Agricultural Statistics Service (NASS) at USDA from the Bureau of the Census, U.S. Department of Commerce. Effective February 2, 1997, NASS also received the transferred program positions and staff from the Bureau of the Census, U.S. Department of Commerce. responsibility for the Advisory Committee on Agriculture Statistics, which is a discretionary committee, was transferred, along with its allocated slot, to USDA with the census of agriculture program.

The Advisory Committee on Agriculture Statistics has provided input and direction to the census of agriculture program since the committee was first established on July 16, 1962. It has been particularly critical to have the committee as a valuable resource to USDA during the transfer of the census from the U.S. Department of Commerce.

The purpose of the committee is to make recommendations on census of agriculture operations including questionnaire design and content, publicity, publication plans, and data dissemination.

FOR FURTHER INFORMATION CONTACT: Contact R. Ronald Bosecker, Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, Telephone: 202–720–2707; Fax: 202–720–9013; or e-mail: *rbosecker@nall.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix II), notice is hereby given that the Secretary of Agriculture has re-established the charter for the Advisory Committee on Agriculture Statistics, hereafter referred to as Committee. The purpose of the Committee is to advise the Secretary of Agriculture on the conduct of the periodic censuses and surveys of agriculture, other related surveys, and the types of agricultural information to obtain from respondents. The committee also prepares recommendations regarding the content of agriculture reports, and presents the views and needs for data of major suppliers and users of agriculture statistics.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest and relevant to the duties of USDA. No other advisory committee or agency of USDA is performing the tasks that will be assigned to the Committee.

The Committee, appointed by the Secretary of Agriculture, shall consist of 25 members representing a broad range of disciplines and interests, including, but not limited to, agricultural economists, rural sociologists, farm policy analysts, educators, State agriculture representatives, and agriculture-related business and marketing experts.

Representatives of the Bureau of the Census, U.S. Department of Commerce, and Economic Research Service, USDA, serve as ex-officio members of the Committee.

The Committee draws on the experience and expertise of its members to form a collective judgment concerning agriculture data collected and the statistics issued by NASS. This input is vital to keep current with shifting data needs in the rapidly changing agricultural environment and keep NASS informed of emerging developments and issues in the food and fiber sector that can affect agriculture statistics activities.

Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Signed at Washington, DC, March 14, 2007.

R. Ronald Bosecker,

Administrator.

[FR Doc. E7–8367 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Appointment to the Advisory Committee on Agriculture Statistics

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notification of appointment to the Advisory Committee on Agriculture Statistics.

SUMMARY: The Office of the Secretary of Agriculture announces members appointed to the Advisory Committee on Agriculture Statistics, in accordance with the Federal Advisory Committee Act, 5 U.S.C. App.

FOR FURTHER INFORMATION CONTACT: Joe Reilly, Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, National Agricultural Statistics Service. Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: *jreilly@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: The appointment for the twenty-five member committee, which has representation across seven categories which covers a broad range of agricultural disciplines and interests, was signed on December 19, 2006. Appointed members, by their associated category are: Consumer and Information Organizations—John Baugh, West Lafayette, IN; Janice Gengenbach,

Smithfield, NE; Kent Schescke, Carmel, IN; Educational Organizations—R. Edmund Gomez, Alcalde, NM; Barry Goodwin, Cary, NC; Ron Plain, Columbia, MO. Farm Services Organizations—Jacklyn Folsom, Cabot, VT; John Hays, Alexandria, VA; Doris Mold, Cumberland, WI; Ranvir Singh, Marysville, CA; John Smylie, Palatine, IL. Government Agencies—Karen Klonsky, Winters, CA. National Farm Organizations—Patricia Berglund, Fargo, ND; Brent Blauch, Mechanicsburg, PA; Peter Daniel, Raleigh, NC; Terry Francl, Crofton, MD. Producer and Marketing Organizations—Gary Adams, Cordova, TN; Carl Brothers, Stuttgart, AR; Roger Cryan, Fairfax, VA; William Lapp, Omaha, NE; Lucy Meyring, Walden, CO; James Robb, Lakewood, CO; Ira Silvergleit, Alexandria, VA. Professional Organizations—Frank Howell, Starkville, MS; A. Gene Nelson, College Station, TX.

The duties of the Committee are solely advisory. The Committee will make recommendations to the Secretary of Agriculture with regards to the agricultural statistics program of the National Agricultural Statistics Service (NASS) and such other matters as it may deem advisable, or which the Secretary of Agriculture, Under Secretary for Research, Education, and Economics, or the Administrator of NASS may request. The Advisory Committee meeting will be held on May 2–3, 2007. All meetings are open to the public. Committee members will be reimbursed for official travel expenses only.

Signed at Washington, DC April 12, 2007.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. E7–8384 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of the Advisory Committee on Agriculture Statistics Meeting

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Agricultural Statistics Service (NASS) announces a meeting of the Advisory Committee on Agriculture Statistics.

DATES: The Committee meeting will be held from 1 p.m. to 4:30 p.m. on Wednesday, May 2, 2007, and from 8 a.m. to 4:30 p.m. on Thursday, May 3, 2007. There will be an opportunity for public questions and comments at 1:40 p.m. on May 3, 2007.

ADDRESSES: The Committee meeting will take place at the Hyatt Regency Crystal City Hotel at Reagan National Airport, 2799 Jefferson Davis Highway, Arlington, Virginia 22202. Written comments may be filed before or within a reasonable time after the meeting with the contact person identified herein at: U.S. Department of Agriculture, National Agricultural Statistics Service, 1400 Independence Avenue, SW., Room 5041A, South Building, Washington, DC 20250–2000.

FOR FURTHER INFORMATION CONTACT: Joe Reilly, Executive Director, Advisory Committee on Agriculture Statistics, Telephone: 202–720–4333, Fax: 202–720–9013, or e-mail: *jreilly@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Committee on Agriculture Statistics, which consists of 25 members appointed from 7 categories covering a broad range of agricultural disciplines and interests, has scheduled a meeting on May 2–3, 2007. During this time the Advisory Committee will discuss topics including Plans for the 2007 Census of Agriculture, Subcommittee reports on Energy, and Equine, Census Follow-on Surveys, Data User Access on Data Enclave and Data Lab's, and Annual Program Priorities.

The Committee meeting is open to the public. The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Agriculture Statistics and will be kept on file for public review in the office of the Executive Director, Advisory Committee on Agriculture Statistics, U.S. Department of Agriculture, Washington, DC 20250.

Dated April 11, 2007, at Washington, DC.

R. Ronald Bosecker,

Administrator, National Agricultural Statistics Service.

[FR Doc. E7–8368 Filed 5–1–07; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4-2007]

Foreign-Trade Zone 121 - Albany, New York, Application for Subzone, MPM Silicones, LLC, Extension of Comment Period

The comment period for the application for subzone status at the MPM Silicones, LLC facility in Waterford, New York, submitted by the Capital District Regional Planning Commission (72 FR 6518, 2/12/07), is being extended to June 6, 2007 to allow interested parties time to comment on new information to be submitted to the FTZ Board in response to questions stemming from the April 18, 2007, hearing held in this case. Rebuttal comments may be submitted during the subsequent 15-day period, until June 21, 2007. 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 2814B, 1401 Constitution Ave. NW, Washington, DC 20230.

For further information, contact Elizabeth Whiteman at Elizabeth—Whiteman@ita.doc.gov or (202) 482-0473.

Dated: April 24, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–8372 Filed 5–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–570–898]

Chlorinated Isocyanurates from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 2, 2007.

FOR FURTHER INFORMATION CONTACT: Katharine Huang or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1271 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2006, the Department of Commerce (the ''Department'') published a notice of initiation of administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China, covering the period December 16, 2004, through May 31, 2006. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 42626 (July 27, 2006). On February 26, 2007, we extended the deadline to complete the preliminary results by 60 days. The preliminary results are currently due no later than May 1, 2007.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the extended time limit. Additional time is required to analyze complicated issues raised by the parties regarding surrogate value selections. Therefore, the Department is further extending the time limit for completion of the preliminary results by 60 days until no later than June 30, 2007. Because June 30, 2007, falls on a Saturday, the preliminary results will be due by July 2, 2007, the next business day. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice. This extension is in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 25, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–8377 Filed 5–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–893]

Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Initiation and Preliminary Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from the People's Republic of China (''PRC''). Based on a request filed by Yelin Enterprise Co. Hong Kong (''Yelin''), the Department is initiating a changed circumstances review to determine whether Hilltop International (''Hilltop'') is the successor–in–interest to Yelin, a respondent in the original investigation and first administrative review.

EFFECTIVE DATE: May 2, 2007.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Christopher Riker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1442 or 202–482–3441, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order for certain frozen warmwater shrimp from the PRC was published on February 1, 2005. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the People's Republic of China*, 70 FR 5149 (February 1, 2005) (''*PRC Shrimp Order*''). As part of the antidumping duty order on certain frozen warmwater shrimp from the PRC, Yelin received a separate rate of 82.27 percent. *Id.* at 70 FR at 5151. Moreover, as part of the preliminary results of the first administrative review, Yelin preliminarily received a separate rate of 0.00 percent. *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Partial Rescission of the 2004/2006 Administrative Review and Preliminary Intent To Rescind 2004/2006 New Shipper Review*, 72 FR 10645 (March 9, 2007).

On March 16, 2007, Yelin filed a submission requesting that the Department conduct a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from the PRC to confirm that Hilltop is the successor–in–interest to Yelin.[1] In its submission, Yelin provided information on the events leading to the transition from Yelin to Hilltop. Yelin also provided documentation relating to the change in name to Hilltop and documentation relating to the share transfer from Yelin to its partners to Hilltop, to carry on the business of Yelin. In addition, Yelin provided documentation relating to the ownership structure and management, organizational structure, customer base, accounting processes, supplier relationships, products, and pricing. As part of its March 16, 2007, submission, Yelin requested that the Department conduct an expedited review.

Scope of Order

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild–caught (ocean harvested) or farm–raised (produced by aquaculture), head–on or head–off, shell–on or peeled, tail–on or tail–off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this investigation, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTS''), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild–caught warmwater species include, but are not limited to, white–leg shrimp

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[1] See Letter from Yelin, to the Department, regarding *Request for Expedited Changed Circumstances Determination, Certain Frozen and Canned Warmwater Shrimp from China* (Case No. A-570-848) (March 16, 2007) (''Yelin's CCR Request'').

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

(*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this investigation. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this investigation.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell–on or peeled (HTS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) Lee Kum Kee's shrimp sauce; (7) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (8) certain dusted shrimp; and (9) certain battered shrimp. Dusted shrimp is a shrimp–based product: (1) That is produced from fresh (or thawed–from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non–shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (''IQF'') freezing immediately after application of the dusting layer. Battered shrimp is a shrimp–based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par–fried.

The products covered by this investigation are currently classified under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this investigation is dispositive.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''Act''), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order, which shows changed circumstances sufficient to warrant a review of the order. Additionally, section 751(b)(4) of the Act states that the Department shall not conduct a review less than 24 months after the date of publication of the determination, in the absence of good cause. As noted above, Yelin and Hilltop filed their request for a changed circumstances review on March 16, 2007, a little over 24 months after the publication of the amended final determination and order. *See PRC Shrimp Order*.

In a changed circumstances review involving a successor–in–interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006). Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon From Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Based on the information provided in its submission, Yelin has provided sufficient evidence to warrant a review to determine if Hilltop is the successor-in-interest to Yelin. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b), we are initiating a changed circumstances review.

Preliminary Results of the Review

Pursuant to section 751(b) of the Act, and 19 CFR 351.216, we will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding or order that shows changed circumstances sufficient to warrant a review of the order. The information submitted by Yelin stating the change in ownership and change in the respondent entity's legal name demonstrates changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(d).

As noted above in the ''Background'' section of this notice, in its request for a changed circumstances review, Yelin stated that it underwent a change in ownership. Yelin was renamed Hilltop International, and subsequent to the name change, the share capital of Yelin was transferred to its two original partners, and reinvested in Hilltop by one original and one new shareholder. The company conducted business under both names of Yelin and Hilltop, until July 2006, although Yelin was not formally dissolved until December 2006.

In determining whether one company is the successor-in-interest to another for purposes of applying the antidumping duty law, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58 (January 2, 2002) (''*Polychloroprene Rubber from Japan*'') (citing *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (''*Canadian Brass*'')).[3] While no single factor or combination of factors will necessarily provide a dispositive indication, the Department will generally consider the new company to

[3] ''Generally, in the case of an asset acquisition, the Department will consider the acquiring company to be a successor to the company covered by the antidumping duty order, and thus subject to its duty deposit rate, if the resulting operation is essentially similar to that existing before the acquisition.'' *See Canadian Brass*, 57 FR at 20461.

be the successor-in-interest to the previous company if the resulting operation with regard to the subject merchandise is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Antidumping Duty Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994); and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006) and accompanying Issues and Decision Memorandum, at Comment 3. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping duty treatment as its predecessor.

Beginning with management, Yelin reported that there has been no change in the company's management or management structure after becoming Hilltop. *See* Yelin's CCR Request at 5 and Exhibit 4. We find that the management structure has remained unchanged.

Second, we looked at the operational structure of Hilltop. Yelin explained that there have been no material changes to its operations or the way it sells subject merchandise. Additionally, Yelin provided a sales documentation flowchart and a flow of goods/payment chart, which demonstrates how products are ordered and sold, and stated that these processes are identical between Yelin and Hilltop. *See* Yelin's CCR Request at 6 and Exhibit 5. We find that Yelin's operational structure has not changed as a result of becoming Hilltop.

Third, we reviewed the supplier relationships of Yelin and Hilltop. Yelin stated that the two affiliated producers, Yangjiang City Hoitat Quick–Frozen Seafood Co., Ltd. and Fuqing Yihua Aquatic Food Co., Ltd., which supplied Yelin with all subject merchandise, continue to supply Hilltop with the subject merchandise, and have done so since the publication of the antidumping duty order. Yelin noted that there have also been no substantial changes to either producer's product lines, production output, or capacity. *See* Yelin's CCR Request at 7. For non–subject merchandise that is sold by Yelin and Hilltop, Yelin states that there have been no changes in the list of unaffiliated suppliers.

Fourth, we reviewed the customer base of both Yelin and Hilltop. Yelin explained that Yelin and subsequently, Hilltop, has only one customer, Ocean Duke, which is invoiced through Taiwanese affiliates. *See* Yelin's CCR Request at 7 and Exhibit 5.

In summary, Yelin reported that its conversion from Yelin to Hilltop did not meaningfully affect the supplier relationships, customer base, management, marketing or sale of products and services. Moreover, there have been no material changes to Yelin's operations or the way it produces and sells subject merchandise resulting in the conversion from Yelin to Hilltop.

Based on Yelin's evidence of the change in ownership and absent any other record evidence that would contradict Yelin's statements, we preliminarily determine that Hilltop should receive the same antidumping duty treatment with respect to certain frozen warmwater shrimp from the PRC as Yelin. If the above preliminary results are affirmed in the Department's final results, the cash deposit rate most recently calculated for Yelin will apply to all entries of subject merchandise by Hilltop, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. *See, e.g., Granular Polytetrafluoroethylene Resin from Italy; Final Results of Changed Circumstances Review*, 68 FR 25327 (May 12, 2003). This cash deposit rate, if imposed, shall remain in effect until further notice.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Interested parties may submit case briefs no later than 30 days after the date of publication of this notice, in accordance with 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed no later than 5 days after the case briefs, in accordance with 19 CFR 351.309(d)(1). Any hearing, if requested, will normally be held two days after rebuttal briefs are due, in accordance with 19 CFR 351.310(d)(1).

The Department will issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 of the Department's regulations.

Dated: April 25, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–8386 Filed 5–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Japan in response to a request by United States Steel Corporation, one of the petitioners in the original investigation (Petitioner). Petitioner requested administrative reviews of JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), NKK Tubes (NKK) and Sumitomo Metal Industries, Ltd. (SMI). This review covers sales of subject merchandise to the United States during the period of August 1, 2005 through July 31, 2006.

We preliminarily determine that all four companies had no reviewable sales of subject merchandise to the United States during the period of review (POR). Accordingly, we preliminarily determine that the review of these four companies should be rescinded in accordance with 19 CFR 351.213(d)(3). Interested parties are invited to comment on these preliminary results. *See* ''Intent to Rescind the Administrative Review'' section of this notice.

EFFECTIVE DATE: May 2, 2007.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1396 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published the antidumping duty order on OCTG from Japan in the **Federal Register** (60 FR 41058). On August 1, 2006, the Department published a notice of opportunity to request an administrative review of this order (71 FR 43441). On August 31, 2006, the Department received a timely request for review from Petitioner, covering JFE, Nippon, NKK and SMI.[1] On September 29, 2006, we published a notice initiating an administrative review of the antidumping order on OCTG from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 57465 (September 29, 2006).

The Department issued the original questionnaire on November 1, 2006. On November 17, 2006, JFE submitted a certification that it had no reportable sales during the POR, and requested prompt rescission of the review with respect to JFE. Also on November 17, 2006, Nippon responded and certified that it had no sales of subject merchandise to or in the United States during the POR. On November 22, 2006, NKK submitted a no shipment certification and requested expeditious rescission of the review with respect to NKK. Finally, on December 8, 2006, SMI responded that it did not have any U.S. sales or shipments of subject merchandise during the POR. The Department issued follow–up supplemental questionnaires to these four respondents, and received timely responses from them, providing further explanation and documentation concerning their claims of no shipments during the POR.

Period of Review

This review covers the period August 1, 2005 through July 31, 2006.

Scope of the Order

The products covered by this order are OCTG, hollow steel products of circular cross–section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (''API'') or non–API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under sub–headings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

As a result of recent changes to the Harmonized Tariff Schedule, effective February 2, 2007, the subject merchandise is also classifiable under the following additional HTS item numbers: 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The HTSUS sub–headings are provided for convenience and customs purposes only. The written description of the scope of the order remains dispositive.

Intent to Rescind the Administrative Review

In response to our questionnaires, all four respondents submitted certified statements claiming no U.S. sales or shipments of subject merchandise during the POR. The petitioner did not comment on the claims. In order to corroborate the no–shipment statements, the Department requested information from U.S. Customs and Border Protection (CBP). Such information showed entries of subject merchandise produced by the four respondents during the POR. We requested additional information from the four respondents based on the CBP information. Based on our analysis of the CBP information and the information provided by the respondents, we find that these four companies had no reviewable sales of subject merchandise. Since much of the information and documentation provided by CBP or submitted by respondents to demonstrate the circumstances of each of the entries is business proprietary, a complete analysis of the Department's determination that none of the entries constitute reviewable sales during the POR is set forth in the Memorandum from Jun Jack Zhao, Case Analyst, AD/CVD Operations Office 6 to Barbara E. Tillman, Director, *Analysis Memorandum regarding the Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Japan (A–588–835)*, dated concurrently with this notice. A public version of the memorandum is on file in Room B–099, the Central Records Unit of the main Commerce Building. Therefore, in accordance with 19 CFR 351.213(d)(3), we intend to rescind the administrative review of all four respondents.

Duty Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). If we determine in the final results that this review should be rescinded with respect to JFE, NKK, Nippon and SMI because these companies had no reviewable sales of subject merchandise to the United States during the POR, we will direct CBP to liquidate all entries of subject merchandise manufactured by these four companies, and entered or withdrawn from warehouse for consumption during the POR, at the ''all others'' rate, 44.20 percent [2], as all such sales were made by intermediary companies (*e.g.*, resellers) not covered in this review, a prior review, or the less than fair value (LTFV) investigation. *See Antidumping and Countervailing Duty Proceedings: Assessment of*

[1] In a previous review, the Department found that SMI and Sumitomo Corporation (SC) were affiliated and treated them as a single entity. *See Oil Country Tubular Goods From Japan; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 64 FR 48589 (September 7, 1999); *Oil Country Tubular Goods From Japan; Final Results of Antidumping Duty Administrative Review*, 65 FR 15305 (March 22, 2000). Neither SMI nor SC has placed information on the record of this review suggesting that the basis for this finding has changed.

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Oil Country Tubular Goods from Japan*, 60 FR 155 (August 11, 1995) (*Final Determination*).

Antidumping Duties, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rates will be effective with respect to all shipments of OCTG from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended (the Act): (1) for all four companies, JFE, NKK, Nippon and SMI, the cash deposit rate will remain unchanged and will be the company–specific rate established for the most recent period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all others rate established in the LTFV investigation, which is 44.20 percent. *See Final Determination*. These deposit rates, when imposed, shall remain in effect until further notice.

Public Comment

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to this notice of intent to rescind the administrative review. Unless the deadline is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended. *See* 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under

19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 25, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–8383 Filed 5–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–821, C–570–907, C–580–857]

Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea: Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is aligning the final determinations in the countervailing duty investigations of coated free sheet paper (CFS) from Indonesia, the People's Republic of China (PRC), and the Republic of Korea (Korea) with the final determinations in the companion antidumping investigations.

EFFECTIVE DATE: May 2, 2007.

FOR FURTHER INFORMATION CONTACT: Gene Calvert (Indonesia), David Layton (PRC), or Maura Jeffords (Korea), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586, (202) 482–0371, or (202) 482–3146, respectively.

BACKGROUND: On November 20, 2006, the Department initiated the countervailing duty and antidumping duty investigations on CFS from Indonesia, the PRC, and Korea. *See Notice of Initiation of Countervailing Duty Investigations: Coated Free Sheet Paper From the People's Republic of China, Indonesia, and the Republic of Korea*, 71 FR 68546 (November 27, 2006), and *Initiation of Antidumping Duty Investigations: Coated Free Sheet Paper from Indonesia, the People's Republic of China, and the Republic of Korea*, 71 FR 68537 (November 27, 2006). The countervailing duty and antidumping duty investigations have the same scope with regard to the subject merchandise covered. On April 9, 2007, the Department published the preliminary affirmative countervailing duty determinations pertaining to CFS from Indonesia, the PRC, and Korea. *See Coated Free Sheet Paper from Indonesia: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17498 (April 9, 2007); *Coated Free Sheet Paper From the People's Republic of China: Amended Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17484 (April 9, 2007) and; *Coated Free Sheet Paper From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination*, 72 FR 17507 (April 9, 2007). On March 26, 2007, the petitioner submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty determinations with the final determinations in the companion antidumping duty investigations of CFS from Indonesia, the PRC, and Korea.

Therefore, in accordance with section 705(a)(1) of the Act, and 19 C.F.R. 351.210(b)(4), we are aligning the final countervailing duty determinations on CFS from Indonesia, the PRC, and Korea with the final determinations in the companion antidumping duty investigations of CFS from Indonesia, the PRC, and Korea. The final countervailing duty determinations will be issued on the same date as the final antidumping duty determinations currently scheduled for August 13, 2007, the first business day following the August 12, 2007 deadline for the final antidumping duty determinations.

This notice is issued and published pursuant to section 705(a)(1) of the Act.

Dated: April 26, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–8375 Filed 5–1–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Final Results of Countervailing Duty New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 26, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the new shipper review of the countervailing duty (''CVD'') order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2005, through December 31, 2005. The Department preliminarily found that Toscelik Profil ve Sac Endustrisi A.S. and its affiliated export trading company, Tosyali Dis Ticaret A.S. (collectively referred to as ''Toscelik''), the producer/exporter of subject merchandise covered by this review, received countervailable subsidies during the period of review (''POR''). We did not receive any comments on our preliminary results and have made no revisions to those results.

EFFECTIVE DATE: May 2, 2007.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or George McMahon, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793 and (202) 482–1167, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, the Department published in the **Federal Register** the CVD order on certain welded carbon steel pipe and tube products from Turkey. *See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986). On February 26, 2007, the Department published in the **Federal Register** the preliminary results for this review. *See Preliminary Results of Countervailing Duty New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 72 FR 8348 (February 26, 2007) (''*New Shipper Preliminary Results*'').

In the *New Shipper Preliminary Results*, we invited interested parties to submit case briefs commenting on the preliminary results or to request a hearing. We did not hold a hearing in this review, as one was not requested, and did not receive any case briefs.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (''HTSUS'') as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of Review

As noted above, the Department received no comments concerning the preliminary results. Therefore, consistent with the *New Shipper Preliminary Results*, we continue to find that Toscelik received countervailable subsidies during the POR. In accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (''the Act''), we calculated a total net subsidy rate of 0.20 percent *ad valorem*, which is *de minimis*, pursuant to 19 CFR 351.106(c).

As there have been no changes to or comments on the preliminary results, we are not attaching a decision memorandum to this **Federal Register** notice. For further details of the programs included in this proceeding, see the *New Shipper Preliminary Results*.

Assessment Rates/Cash Deposits

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (''CBP'') 15 days after the date of publication of these final results of this review, to liquidate shipments of subject merchandise by Toscelik entered, or withdrawn from warehouse, for consumption on or after January 1, 2005, through December 31, 2005, without regard to countervailing duties because a *de minimis* subsidy rate was calculated. We will also instruct CBP not to collect cash deposits of estimated countervailing duties on shipments of the subject merchandise by Toscelik entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. These deposit requirements shall remain in effect until further notice.

Return or Destruction of Proprietary Information

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 27, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–8376 Filed 5–1–07; 8:45 am]

BILLING CODE 3510–DS–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 17 May 2007, at 10 a.m. in the Commission Offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC April 26, 2007.

Thomas Luebke,

Secretary.

[FR Doc. 07–2155 Filed 5–1–07; 8:45 am]

BILLING CODE 6330–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing

effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its Learn and Serve America Program and Performance Measurement Reports. These reports are used by current grantees, subgrantees and sub-subgrantees to report on Learn and Serve-funded service-learning programs. Data collected through the reports are utilized by the Corporation for Congressional reporting and program management. Completion of the Program and Performance Measurement Reports is a requirement of the Learn and Serve grant provisions.

Copies of the information collection requests 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 July 2, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Research and Policy Development; Attention Kimberly Spring, Policy Analyst, 10th Floor; 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) 606–3464, Attention Kimberly Spring, Policy Analyst.

(4) Electronically through the Corporation's e-mail address system: *kspring@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly Spring, (202) 606–6629, or by e-mail at *kspring@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

<bullet≤ 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;

<bullet≤ 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;

<bullet≤ Enhance the quality, utility, and clarity of the information to be collected; and

<bullet≤ Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Learn and Serve America Program was established by the National and Community Service Act of 1990, as amended, (42 U.S.C. 12501, *et seq.*) (Pub. L. 103–82) to support efforts in schools, higher education institutions, and community-based organizations to involve young people in meaningful service to their communities while improving academic, civic, social, and career-related skills. The Learn and Serve program is administered by the Corporation for National and Community Service and is funded through grants to states, national organizations, and institutions of higher education, and through them to individual schools and school districts, community-based organizations, and colleges or universities. Approximately 100 grantees and 2,000 subgrantees and sub-subgrantees receive Learn and Serve funds each year.

The Learn and Serve America Program and Performance Measurement Reports provide an annual program reporting process for Learn and Serve: Collecting program characteristics, output measurements, and institutional-level service-learning policies and practices. The system is Web-based and allows for the electronic submission of reporting information and grantee and public-use access of data collected through the system.

Current Action

The Corporation seeks to renew the current reporting instruments, which are designed to collect information on (a) the characteristics of grantee and subgrantee organizations; (b) the scope and structure of service-learning activities in the funded organizations; (c) number of participants in service-learning and the hours of service provided; and (d) institutional supports for service-learning. The Corporation maintains three versions of the reporting instrument to correspond to the three major funding streams under Learn and Serve America: K–12 School-Based, Higher Education, and Community-Based. The Corporation also seeks to continue using the reporting instruments until the renewal of the instruments is approved by OMB. The current application is due to expire on September 30, 2007.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Program and Performance Measurement Reports.

OMB Number: 3045–0095.

Agency Number: None.

Affected Public: Learn and Serve America Grantees and Subgrantees.

Total Respondents: 2,100.

Frequency: Annually.

Average Time Per Response: ¼ hour for grantees and one hour for subgrantees.

Estimated Total Burden Hours: 2,025 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: April 24, 2007.

Robert Grimm, Jr.,

Director, Office of Research and Policy Development.

[FR Doc. E7–8350 Filed 5–1–07; 8:45 am]

BILLING CODE 6050–$$–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 2007–1]

Safety-Related In Situ Nondestructive Assay of Radioactive Materials

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) which addresses the measuring of radioactive material holdup at defense nuclear facilities in the Department of Energy complex.

DATES: Comments, data, views, or arguments concerning the recommendation are due on or before June 1, 2007.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue., NW, Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Brian Grosner or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: April 27, 2006.

A.J. Eggenberger,

Chairman.

Recommendation 2007–1 to the Secretary of Energy

Safety-Related In Situ Nondestructive Assay of Radioactive Materials

Pursuant to 42 U.S.C. 2286(a)(5); Atomic Energy Act of 1954, As Amended

Dated: April 25, 2007.

Overview

There are many situations in which the quantity and composition of radioactive material must be determined. In some instances, access to the material is impossible or undesirable, and consequently, weighing, laboratory analysis, and calorimetry are not viable options. In these cases, *in situ* nondestructive assay (NDA), based on the measurement of signature emissions from a specific isotope of interest, is used to provide an estimate of the type and quantity of radioactive material present. However, large uncertainties and inaccuracies have occurred in estimating the type and quantity of radioactive material using *in situ* NDA. These uncertainties and inaccuracies include incorrect assumptions about shielding and the spatial distribution of radioactive material, as well as poor measurement techniques. Measurement errors, in turn, lead to potential criticality accident conditions, unexpected radiation exposure to workers, and underestimation of radioactive material available for release in accident scenarios.

In most nuclear safety areas, the Department of Energy (DOE) has captured required elements for robust site programs through its Directives system. These elements include requirements necessary for proper functioning of the program, training and qualification standards for personnel, assessment criteria to ensure proper implementation of requirements, and feedback mechanisms for lessons learned and continuous improvement. However, DOE has not established programmatic requirements for NDA, even though this method is heavily relied upon for nuclear safety throughout the complex and is key to many DOE activities. The capability to perform accurate measurements and use the results to determine compliance with nuclear safety limits is absolutely essential.

Research and development efforts for NDA have historically focused on the areas of material control and accountability and nuclear material safeguards; advances in these areas have peripherally benefitted *in situ* NDA measurement capabilities. Current research and development efforts appear to hold little promise for addressing needed improvements for *in situ* NDA measurement. For example, development of instrumentation and measurement techniques is needed to reduce overall measurement uncertainties.

Examples

Three notable instances of recent errors associated with *in situ* NDA measurement of radioactive material holdup are discussed below. These errors resulted from the use of inaccurate correction factors regarding material geometry assumptions or failure to perform measurements at locations where the material was accumulating. In each of these cases, the amount of radioactive material was initially underestimated, resulting in a smaller-than-expected safety margin and violations of criticality safety limits.

Material holdup in 6-inch diameter vacuum system pipe at the Hanford Site's Plutonium Finishing Plant was assumed to be in the form of a 0.25 inch layer at the bottom of the pipe. Using a correction factor for this geometry, the initial estimate of material was about 1 kg. When workers then proceeded to remove the piping, it was found to be filled with a solid plug of material, and the actual amount of material present was nearly twice as high as the initial estimate.

Measurement of an exhaust filter at the Y–12 National Security Complex assumed that fissionable material was loaded only on the face of the filter. An estimate of a few hundred grams of material was obtained using correction factors for this geometry. Subsequent investigation showed that material was loaded throughout the filter, and not just on the face. The actual amount of fissionable material present was several times the initial estimate.

A second exhaust filter at the Y–12 National Security Complex was measured periodically using NDA, but the measurement point was not where the fissionable material was accumulating. Once this error was discovered, follow-up measurements showed significant material accumulation.

In each of these instances, site-specific corrective actions were taken based on the specific problem encountered. Lessons learned from these events do not appear to have been shared within the DOE complex. Complex-wide corrective actions have not been identified to minimize the occurrence of similar events at other sites. The Board is concerned that undiscovered problems currently exist at other facilities within the DOE complex. It is incumbent upon DOE and its contractors to review current *in situ* NDA measurements to determine whether the assumptions used to derive results are sufficiently conservative to ensure compliance with nuclear safety limits.

Issues

Three main issues dominate the current technical and regulatory landscape regarding *in situ* NDA measurements: (1) Lack of standardized requirements for performing measurements, (2) lack of design requirements for new facilities that would facilitate accurate holdup measurement, and (3) lack of research and development activities for new instrumentation and/or measurement techniques. Each of these issues is discussed below.

Lack of Standardization—DOE has not established requirements or guidance for performing *in situ* measurements in its Directives system. While the Board recognizes that measurement techniques can be highly location specific, a requirement to follow methods outlined in national consensus standards when performing *in situ* NDA measurements would reduce the errors and uncertainty of results. Commercial guidance for NDA is available in a series of standards published by the American Society for Testing and Materials (ASTM). This series addresses good practices for performing NDA measurements, methods for performing specific types of NDA measurements (for example, ASTM C–1133–03, *NDA of Low-Density Scrap and Waste by Segmented Passive Gamma Ray Scanning*), and training and qualification of NDA personnel. While this guidance has been used informally at some sites, DOE has not required its use for NDA measurements.

Lack of Design Requirements for New Facilities—Many of the problems that require *in situ* NDA to determine radioactive material holdup arose because facilities were designed and built before the need for NDA technology was evident. As a result, no consistent attempt was made to design facility systems to minimize holdup or facilitate its measurement. This historical trend should not be repeated in new facilities. The necessity of monitoring radioactive material holdup must be considered in the design of new facilities. For example, locations for monitoring can be selected during the design phase on the basis of the most likely locations for holdup to occur. Calibrations can then be performed at these locations *before* the facility begins operations to provide a baseline for future NDA measurements. Facilities can also be designed to minimize holdup in areas where it may be of concern.

Lack of Research and Development Activities—Los Alamos National Laboratory (LANL) conducted NDA research for more than 20 years. LANL developed most of the NDA techniques in current use, and conducts associated training programs. However, it is not clear that any significant research and development for *in situ* NDA measurements is currently being conducted within DOE to address serious concerns with material holdup. Research and development activities are focused in other areas, such as nuclear material safeguards and homeland security, but these efforts have different objectives and may not yield results that are beneficial for measurements using *in situ* NDA.

Recommendation

The Board, therefore, recommends that DOE:

1. Evaluate the extent of condition regarding inaccurate *in situ* NDA programs

within DOE. This effort should involve at least two actions:

A. Identifying all cases within the defense nuclear complex in which *in situ* NDA results are used to ensure compliance with nuclear safety limits.

B. Reviewing the cases identified in step 1.A to validate that the protocols, methodologies, calculations, and assumptions used to obtain NDA results are sufficiently conservative. This review should take into consideration lessons learned from recent events.

2. Establish requirements and guidance in a DOE directive or directives. The requirements and guidance should focus on *in situ* NDA programs that are used to demonstrate compliance with nuclear safety limits. Particular issues to be addressed should include:

A. Training and qualification standards for personnel involved in performing NDA measurements, interpreting and reviewing results, and managing site programs.

B. Application of standard protocols and methodologies, such as those given in the national consensus series issued by ASTM, for performing NDA measurements.

C. Standardization of correction factors for common situations (geometry and self-attenuation factors) and consistent application of uncertainty values.

D. Reinforcement of the use of formal lessons-learned mechanisms in the application of NDA programs so that information can be shared easily among affected DOE sites.

E. Incorporation of features in the design of new facilities to minimize radioactive material holdup and facilitate accurate NDA holdup measurements.

F. Periodic assessments of the need for new NDA technology and the status of ongoing NDA-related research and development programs.

G. Periodic assessments to ensure that NDA programs are using the best available technology.

H. Incorporation of appropriate quality assurance elements into *in situ* NDA measurements when used for *compliance* with nuclear safety limits as required by 10 Code of Federal Regulations Part 830.

A.J. Eggenberger,

Chairman.

[FR Doc. E7–8374 Filed 5–1–07; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by December 7, 2007.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachael Potter, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (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 this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 26, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: U.S.-Russian Program: Improving Research and Educational Activities in Higher Education.

Abstract: This is a new Special Focus Competition, administered by the Fund for the Improvement for Postsecondary Education (FIPSE). FIPSE's U.S.-Russia Program will award grants to U.S. institutions participating in bilateral institutional cooperation to support innovative projects that will improve research and education activities in higher education in the U.S. and Russia. The rationale for the U.S.-Russia Program is based upon the need for increased interconnectedness between the U.S. and Russia in order to operate effectively in a global economy. Institutions will be funded by their respective government agencies in areas that advance the study of English and Russian and demonstrate innovative and/or best practices in a variety of academic disciplines, such as mathematics, science, and economics.

Additional Information: This important unique program is facing a tight deadline in order for both nations to have adequate time to apply, and hence we are asking for this emergency clearance to provide possible applicants a decent amount of time to complete the necessary application.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 12.

Burden Hours: 360.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3323. 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., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *ICDocketMgr@.edgov* or faxed to 202–245–6623. 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. 07–2159 Filed 5–1–07; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction Notice.

SUMMARY: On March 28, 2007, the Department of Education published a notice in the **Federal Register** (Page 14542, Column 1) for the information collection, ''Study of the Program for Infant Toddler Care''. This notice hereby corrects the number of responses from 2,667 to 3,722.

The IC Clearance Official, Regulatory Information Management Services, Office of Management, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: April 27, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

[FR Doc. E7–8354 Filed 5–1–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (*i.e.*; interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than May 4, 2007. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: May 17–19, 2007.

Times:

May 17

Committee Meetings

Assessment Development Committee: Open Session—12 p.m. to 3 p.m.;

Reporting and Dissemination Committee: Closed Session—3 p.m. to 3:30 p.m.; Open Session—3:30 p.m. to 4 p.m.;

Executive Committee: Open Session—4:30 p.m. to 6 p.m.

May 18

Full Board: Open Session—8:30 a.m. to 9:45 a.m..; Closed Session—12:15 p.m. to 1:45 p.m.; Open Session—1:45 p.m.—3 p.m.; Closed Session—3 p.m. to 4 p.m.

Committee Meetings

Assessment Development Committee: Open Session—9:45 a.m. to 12:15 p.m.;

Committee on Standards, Design and Methodology: Open Session—9:45 a.m. to 11:15 a.m.; Closed Session—11:15 a.m. to 12:15 p.m.;

Reporting and Dissemination Committee: Open Session—9:45 a.m. to 12:15 p.m.;

May 19

Nominations Committee: Closed Session—8:15 a.m. to 8:45 a.m.

Full Board: Open Session—9 a.m. to 12 p.m.

Location: The Langham Hotel, 250 Franklin Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

On May 17, the Assessment Development Committee will meet in open session from 12 p.m. to 3 p.m. The Reporting and Dissemination Committee will meet in closed session on May 17 from 3 p.m. to 3:30 p.m. to receive a briefing on secure data on participation, exclusion, and accommodation rates for grades 4, 8, and 12 for the 2007 NAEP assessments. The NAEP reports will be not be released until the fall of 2007. The meeting must be conducted in closed session as disclosure of proposed test items for the reading assessment would significantly impede implementation of the NAEP program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C. The Reporting and Dissemination Committee will meet in open session on May 17 from 3 p.m. to 4:30 p.m. The Executive Committee will meet in open session on May 17 from 4:30 p.m. to 6 p.m.

On May 18, the full Board will meet in open session from 8:30 a.m. to 12:15 p.m. From 8:30 a.m. to 9 a.m. the Board will approve the agenda, followed by welcome remarks. The Board will then receive the Executive Director's report and hear an update on the work of the National Center for Education Statistics (NCES).

From 9:45 a.m. to 12:15 p.m. on May 18, the Assessment Development Committee and the Reporting and Dissemination Committee will meet in open session. The Committee on Standards, Design and Methodology will meet in open session on May 18 from 9:45 a.m. to 11:15 a.m. and will meet in closed session from 11:15 a.m. to 12:15 p.m. to discuss the 2006 NAEP Economics Achievement Levels for Grade 12. This briefing will involve discussion of achievement level findings which constitute a major basis for the national release of the NAEP Grade 12 Economics results, and cannot be released in an open meeting prior to the official release of the reports. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP release activities, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 18, the full Board will meet in closed session from 12:15 p.m. to 1:45 p.m. The Board will receive a briefing provided by the National Center for Education Statistics on the NAEP 2006 U.S. History and Civics Report Cards. The Governing Board will be provided with embargoed data that cannot be discussed in an open meeting prior to their official release. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of The Nation's Report

Card initial release activities, as protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 18 from 2 p.m. to 3 p.m. the Board will receive a presentation on the Massachusetts Comprehensive Assessment System. From 3 p.m. to 4 p.m., the Board will meet in closed session to discuss the 2006 NAEP Economics Achievement Levels for Grade 12. This briefing will involve discussion of achievement level findings which constitute a major basis for the national release of the NAEP Grade 12 Economics results, and cannot be released in an open meeting prior to the official release of the reports. The meeting must therefore be conducted in closed session as disclosure of data would significantly impede implementation of the NAEP release activities, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 19, the Nominations Committee will meet in closed session from 8:15 a.m. to 8:45 a.m. to review and discuss confidential information regarding nominees received for Board vacancies for terms beginning on October 1, 2007. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on May 19 from 9 a.m. to 12 noon. From 9 a.m. to 10 a.m. the Board will receive a briefing on NAEP Accommodations. Board actions on policies and Committee reports are scheduled to take place between 10:15 a.m. and 12 p.m., upon which the May 19, 2007 session of the Board meeting will adjourn.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 1825, 800 North Capitol Street, NW, Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 27, 2007.

Charles E. Smith,

Executive Director, U.S. Department of Education, National Assessment Governing Board.

[FR Doc. E7–8357 Filed 5–1–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Organization of PJM States, Inc., District of Columbia Public Service Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Maryland Public Service Commission, New Jersey Board of Public Utilities, North Carolina Utilities Commission, Pennsylvania Public Utility Commission, and the Virginia State Corporation Commission, Petitioners; v. PJM Interconnection, L.L.C., Respondent: Notice of Designation of Commission Staff as Non-Decisional

April 25, 2007.

Effective April 24, 2007, Alan Haymes, of the Federal Energy Regulatory Commission (Commission), was designated as non-decisional staff in the above-captioned docket. As non-decisional staff, Mr. Haymes will not participate in an advisory capacity in deliberations on the issues pending therein. Separated non-decisional and advisory staffs are prohibited from communicating with one another concerning the deliberations set forth above.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8335 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RT01–99–000, RT01–99–001, RT01–99–002 and RT01–99–003; RT01–86–000, RT01–86–001 and RT01–86–002; RT01–95–000, RT01–95–001 and RT01–95–002; RT01–2–000, RT01–2–001, RT01–2–002 and RT01–2–003; RT01–98–000; RT02–3–000]

Regional Transmission Organizations; Bangor Hydro-Electric Company, et al.; New York Independent System Operator, Inc., et al.; PJM Interconnection, L.L.C., et al.; PJM Interconnection, L.L.C.; ISO New England, Inc. New York Independent System Operator, Inc.: Notice of Filing

April 25, 2007.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet websites information updating their progress on the resolution of RTO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: May 16, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8332 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–51–000]

Texxon Utilities, Ltd. Co.; WCW International, Inc.; Notice of Institution of Proceeding and Refund Effective Date

April 25, 2007.

On April 25, 2007, the Commission issued an order that instituted a proceeding in the above-referenced docket, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, concerning the justness and

reasonableness of the market-based rates of Texxon Utilities, Ltd. Co. and WCW International, Inc.

The refund effective date in the above-docketed proceedings, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8334 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings ●1

April 25, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–61–000.

Applicants: Horsehead Corporation; Horsehead Holding Corporation.

Description: Horsehead Corp. and Horsehead Holding Corp. submit an amendment to its 2/16/07 filing and request expedited action.

Filed Date: 04/24/2007.

Accession Number: 20070424–5037.

Comment Date: 5 p.m. Eastern Time on Friday, May 4, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–316–024.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits its Index of Customers for the first quarter of 2007 in compliance with FERC's 6/1/01 letter order.

Filed Date: 04/18/2007.

Accession Number: 20070423–0006.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 9, 2007.

Docket Numbers: ER01–1699–007.

Applicants: Pilot Power Group, Inc.

Description: Pilot Power Group, Inc submits its Updated Market Analysis.

Filed Date: 04/20/2007.

Accession Number: 20070425–0181.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER04–691–085.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to their Open Access Transmission Tariff, FERC Electric Tariff, Third Revised Volume 1.

Filed Date: 04/17/2007.

Accession Number: 20070423–0375.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 8, 2007.

Docket Numbers: ER06–262–003.

Applicants: Pittsfield Generating Company.

Description: Pittsfield Generating Co, LP submits a Refund Report and modified and restated cost-of-service agreement pursuant to the Commission's 4/2/07 order.

Filed Date: 04/19/2007.

Accession Number: 20070423–0374.

Comment Date: 5 p.m. Eastern Time on Thursday, May 10, 2007.

Docket Numbers: ER06–554–002.

Applicants: Virginia Electric & Power Company.

Description: Virginia Electric and Power Co submits a revised Settlement Agreement with Old Dominion Electric Coop et al in compliance with the Commission's 4/3/02 Order.

Filed Date: 04/18/2007.

Accession Number: 20070423–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 9, 2007.

Docket Numbers: ER07–434–002.

Applicants: Jersey Central Power & Light Company; FirstEnergy Solutions Corp.

Description: Jersey Central Power & Light Company et al submit Second Revised Sheet 3 et al to FERC Electric Tariff, First Revised Volumes No 1, et al.

Filed Date: 04/20/2007.

Accession Number: 20070424–0180.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–508–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an amendment to its proposal to revise its Operating Agreement and Open Access Transmission Tariff etc submitted on 2/2/07 in response to FERC's 4/3/07 directive.

Filed Date: 04/18/2007.

Accession Number: 20070423–0008.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 9, 2007.

Docket Numbers: ER07–572–001.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits Revised Master Power Supply Agreement with Great Lakes Utilities originally filed on 2/26/07.

Filed Date: 04/19/2007.

Accession Number: 20070423–0007.

Comment Date: 5 p.m. Eastern Time on Thursday, May 10, 2007.

Docket Numbers: ER07–689–001.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection LLC submits revised Interconnection Service Agreement between PJM, Industrial Power Generating Co LLC, and PPL Electric Utilities Corporation.

Filed Date: 04/20/2007.

Accession Number: 20070424–0181.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–765–000.

Applicants: American Electric Power Service Corporation.

Description: The American Electric Power Service Corporation agent for AEP Operating Companies submits an interconnection and local delivery service agreement with the Village of Cygnet, Ohio.

Filed Date: 04/20/2007.

Accession Number: 20070424–0182.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–766–000.

Applicants: Indiana Michigan Power Company.

Description: Indiana Michigan Power Company submits First Revised Sheet 29 et al which cancels Original Sheet 29 to FERC Rate Schedule 101 etc.

Filed Date: 04/20/2007.

Accession Number: 20070424–0183.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–767–000.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England Inc & New England Power Pool Participants Committee submits Market Rule 1 changes relating to the real-time scheduling of energy transactions over the underwater cable etc.

Filed Date: 04/20/2007.

Accession Number: 20070424–0130.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–768–000.

Applicants: Indiana Michigan Power Company.

Description: Indiana Michigan Power Company submits a Notice of cancellation of Rate Schedules 70, 74 and Service Agreement 4 under FERC electric Tariff, Original Volume 4 etc.

Filed Date: 04/20/2007.

Accession Number: 20070424–0185.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–769–000.

Applicants: Cedar Rapids Transmission Company, Ltd.

Description: Cedar Rapids Transmission Company, Ltd submits its application for market based rate authority and on 2/23/07 Open Access Transmission Tariff to supplement the 4/20/07 filing.

Filed Date: 04/20/07 and 04/23/2007.

Accession Number: 20070424–0198 and 20070424–0199.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–770–000.

Applicants: Williams Power Company, Inc.

Description: Williams Power Company, Inc submits proposed FERC Rate Schedule 3 and supporting cost data under which Williams specifies its revenue requirement for providing cost-based Reactive Supply and Voltage Control etc.

Filed Date: 04/20/2007.

Accession Number: 20070424–0186.

Comment Date: 5 p.m. Eastern Time on Friday, May 11, 2007.

Docket Numbers: ER07–772–000.

Applicants: Midwest Independent Transmission System Operator Inc.

Description: Midwest Independent Transmission System Operator Inc submits proposed revisions to Sheet 208 of its ISO's Open Access Transmission and Energy Markets Tariff.

Filed Date: 04/23/2007.

Accession Number: 20070425–0162.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Docket Numbers: ER07–773–000.

Applicants: Velocity Futures, L.P.

Description: Velocity Futures LP submits its Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority designated as FERC 1.

Filed Date: 04/23/2007.

Accession Number: 20070425–0163.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Docket Numbers: ER07–774–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits its revised Rate sheets to its Transmission Owner Tariff.

Filed Date: 04/23/2007.

Accession Number: 20070425–0164.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Docket Numbers: ER07–776–000.

Applicants: Westar Energy, Inc.

Description: Westar Energy Inc submits Fourth Revised Sheets 1 and 4 of First Revised Rate Schedule 233, Electric Power Supply Agreement with the City of Robinson, Kansas etc.

Filed Date: 04/23/2007.

Accession Number: 20070425–0159.

Comment Date: 5 p.m. Eastern Time on Monday, May 14, 2007.

Docket Numbers: ER07–777–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation agent for AEP Operating Companies submits a first revision to the Interconnection and Local Delivery Service Agreement 1422 with the Village of Deshler.

Filed Date: 04/24/2007.

Accession Number: 20070425–0158.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Docket Numbers: ER07–778–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation agent for AEP Operating Companies submits a first revision to the Interconnection & Local Delivery Service Agreement 1416 with the Village of Arcadia.

Filed Date: 04/24/2007.

Accession Number: 20070425–0157.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Docket Numbers: ER07–779–000.

Applicants: American Electric Power Services Corp.

Description: American Electric Power Service Corporation agent for AEP Operating Companies submits a first revision to the Interconnection and Local Delivery Service Agreement 1423 with the Village of Greenwich.

Filed Date: 04/24/2007.

Accession Number: 20070425–0156.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Docket Numbers: ER07–780–000.

Applicants: American Electric Power Service Corporation

Description: American Electric Power Service Corporation agent for AEP Operating Companies submits a first revision to the Interconnection and Local Delivery Service Agreement 1417 with the Village of Bloomdale.

Filed Date: 04/24/2007.

Accession Number: 20070425–0155.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Docket Numbers: ER07–781–000.

Applicants: American Electric Power Service Corporation.

Description: American Electric Power Service Corporation agent for AEP Operating Companies submits a first revision to the Interconnection and Local Delivery Service Agreement 1418 with the City of Bryan.

Filed Date: 04/24/2007.

Accession Number: 20070425–0154.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 15, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8326 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Comment Meetings for the Elba III Project Draft Environmental Impact Statement

April 25, 2007.

Southern LNG Inc. (Docket No. CP06–470–000); Elba Express Company, L.L.C. (Docket Nos. CP06–471–000, CP06–472–000, and CP06–473–000); Southern Natural Gas Company (Docket No. CP06–474–000)

On March 30, 2007, the staff of the Federal Energy Regulatory Commission (FERC or Commission) issued a draft Environmental Impact Statement (EIS) for the Elba III Project, proposed by Southern LNG Inc., Elba Express Company, LLC, and their parent company Southern Natural Gas Company, a subsidiary of El Paso Corporation. Issuance of the draft EIS began a 45-day public comment period which will end on May 21, 2007. In addition to accepting written comments on the draft EIS, the Commission staff will be hosting public comment meetings in the project area to accept oral comments as listed in the following table.

Public meeting date and time	Location
Monday, May 7, 2007 at 7 p.m.	Washington-Wilkes High School Cafeteria, 304 Gordon Street, Washington, GA 30673, Phone: (706) 678–2426.
Tuesday, May 8, 2007 at 7 p.m.	Thomson High School Cafeteria, 1160 White Oak Road, Thomson, GA 30824, Phone: (706) 986–4200.
Wednesday, May 9, 2007 at 7 p.m.	Sylvania Recreation Building, 605 Millen Highway, Sylvania, GA 30467, Phone: (912) 863–2388.
Thursday, May 10, 2007 at 7 p.m.	Quality Inn Conference Center, (Southburg Chateau Room), 301 Governor Truetlen Drive, Pooler, GA 31322, Phone: (912) 748–6464.

Comment Procedure

Instructions for submitting written comments are included in the draft EIS and the Notice of Availability that were issued on March 30, 2007. These documents can be found on the FERC Internet website as discussed below. Oral comments presented at the public comment meetings will be given the same consideration as written comments received by mail before the close of the public comment period on May 21, 2007.

As with previous public meetings on the Elba III Project, attendees will be asked to provide their name and address so that any project-related environmental information issued by the Commission may be mailed to all attendees. Additionally, those wishing to provide oral comments will be asked to put their name on a Speakers List. Depending on the number of individuals wishing to provide oral comments, speakers may be asked to limit their presentations to 5 minutes in order that all speakers may be accommodated. Transcripts of the public comment meetings will be prepared and placed into the FERC's public record.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8338 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–128–000]

Cheyenne Plains Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Kirk Compressor Station Project and Request for Comments on Environmental Issues

April 25, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Kirk Compressor Station Project (Project), involving construction and operation of a compressor station and appurtenances by Cheyenne Plains Gas Pipeline Company (CPG).

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on May 25, 2007.

This notice is being sent to affected landowners within half mile of the proposed compressor station; Federal, State, and local government representatives and agencies; environmental and public interest groups; Native American tribes; other interested parties in this proceeding; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Project Description

CPG proposes to construct a new natural gas-fired compressor station referred to as the Kirk Compressor Station which would consist of a single 10,310 horsepower gas fired compressor unit and appurtenances near Kirk in Yuma County, Colorado. The proposed Project would permit the firm transportation of an additional 70,000 dekatherms per day of natural gas to a delivery point near Greensburg, Kansas. The general location of the project is shown on the map attached as Appendix 1.[1]

The Kirk Compressor Station would be constructed on a 40 acre tract of land which is owned by CPG. Approximately 3.69 acres would be permanently disturbed for placement of the compressor station and access road. The current land use is fallow agricultural land. The closest residence is located more than one mile away from the proposed compressor station site (approximately 5,500 feet north northwest of the site).

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to

[1] The appendix referenced in this notice is not being printed in the **Federal Register**. Copies of the appendix (map) are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, call (202) 502–8371. Copies of the appendix will be sent to all those receiving this notice in the mail.

discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

The Commission's staff will prepare an EA that will describe the potential environmental impacts that could result from construction and operation of the proposed project under the general headings:

<bullet≤ Water resources, wetlands, and waterbodies

<bullet≤ Vegetation and wildlife

<bullet≤ Threatened and endangered species

<bullet≤ Cultural resources

<bullet≤ Geology and soils

<bullet≤ Land use and residences

<bullet≤ Air quality and noise

<bullet≤ Reliability and safety

Our independent analysis of the issues will be presented in the EA. We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local government agencies; public interest groups; Native American tribes; interested individuals; affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A 30-day comment period will be allotted for review if the EA is published. We will consider all comments submitted in any Commission Order that is issued for the project.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commenter, your concerns will be addressed in the EA and considered by the Commission. The more specific your comments, the more useful they will be. Generally, comments are submitted regarding the potential environmental effects, reasonable alternatives and measures to avoid or lessen environmental impact.

This notice and request for environmental comments is being sent to affected landowners; federal, state and local government representatives and agencies; environmental and public interest groups; other interested parties in this proceeding; and local libraries and newspapers. We encourage government representatives to notify their constituents of this notice and to encourage their comments concerning this proposed project.

To ensure that your comments are properly recorded, please mail them to our office on or before May 25, 2007. When filing comments please:

<bullet≤ Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

<bullet≤ Label one copy of the comments for the attention of Gas Branch 2; DG2E; and Reference Docket No. CP07–128–000 on the original and both copies.

Please note that the Commission strongly encourages the electronic filing (''eFiling'') of comments, interventions or protests to this proceeding. Instructions on how to ''eFile'' comments can be found on the Commission's Web site at *http://www.ferc.gov* under the ''Documents and Filings'' link.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must end a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8333 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12470–001]

City of Broken Bow, OK; Notice Soliciting Scoping Comments

April 25, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12470–001.

c. *Date filed:* July 26, 2006.

d. *Applicant:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Broken Bow Re-Regulation Dam Hydropower Project.

f. *Location:* On the Mountain Fork River in McCurtain County, Oklahoma. The project would be located at the United States Army Corps of Engineers' (Corps) Broken Bow Re-Regulation Dam and would occupy lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Olen Hill, City Manager, City of Broken Bow, Oklahoma, 210 North Broadway, Broken Bow, Oklahoma 74728; (405) 584–2282.

i. *FERC Contact:* Peter Leitzke at (202) 502–6059, or *peter.leitzke@ferc.gov.*

j. *Deadline for filing scoping comments:* May 25, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application is not ready for environmental analysis at this time.

l. The proposed run-of-river project, using the Corps' existing Broken Bow Re-Regulation Dam and Reservoir, would consist of: (1) Three 93.5-foot-long penstocks through the eastern portion of the re-regulation dam; (2) a 112-foot-wide by 129-foot-long powerhouse containing three turbine-generator units and having a total installed capacity of 4 megawatts; (3) a 170-foot-long tailrace that would return flows to the Mountain Fork River; (4) a 1,891-foot-long, 13.8-kilovolt transmission line; and (5) appurtenant facilities. The project would have an average annual generation of 17,500 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* The Commission staff intends to prepare a single Environmental Assessment (EA) for the Broken Bow Re-Regulation Dam Hydropower Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

The Commission staff, agency representatives, and interested members of the public visited the project site and attended project information meetings conducted by the City of Broken Bow in 2001. The City of Broken Bow worked with the resource agencies and members of the public under the Alternative Licensing Process in preparing the license application, including preparation of a Draft Environmental Assessment which was filed as part of the application. Therefore, we do not anticipate at this time that there is adequate justification: (1) To arrange for Commission staff and interested members of the public to visit the project site; or (2) to hold a public meeting near the project site. Instead, we are soliciting comments, recommendations, and information on the Scoping Document (SD) issued on April 24, 2007.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's service list. Copies of the SD may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8336 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2916–073]

East Bay Municipal Utility District; Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

April 25, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use Of Project Lands And Waters.

b. *Project No.:* 2916–073.

c. *Date Filed:* April 18, 2007.

d. *Applicant:* East Bay Municipal Utility District.

e. *Name of Project:* Lower Mokelumne River Project.

f. *Location:* The project is located on the Mokelumme River, in Amador, Calaveras, and San Joaquin Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r) and 799 and 801.

h. *Applicant Contact:* Leo J. O'Brien, Manager, Water Resource Planning, East Bay Municipal Utilities District, 375 Eleventh Street, Oakland, CA 94607–4240. (510) 287–1143.

i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 25, 2007.

k. *Description of Request:* East Bay Municipal Utility District is requesting Commission approval to construct a pumping plant, power substation, architectural berming, and storage tank, and install 16,500 feet of tunneled pipeline, within the project boundary to

facilitate the movement of water from the Freeport Regional Water Project through a pipeline near Camanche Reservoir. The facilities would not withdraw any water from Camanche Reservoir.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable. Please include the project number (P–2916–073) on any comments or motions filed. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–8337 Filed 5–1–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0343; FRL–8127–4]

Soil Fumigant Pesticides; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is planning to hold two stakeholder meetings to obtain public input on risk management options for the soil fumigant pesticides chloropicrin, dazomet, metam sodium, metam potassium, and methyl bromide. Reregistration for 1,3-dichloropropene (1,3-D or Telone) was completed in 1998, but it is included in the review for comparative purposes. The public meetings will be held in the states of Washington and Florida in late May and early June 2007. The purpose of the meetings is for the Agency to obtain first-hand comments on possible human health risk mitigation options from stakeholders who are most affected by soil fumigant use, including growers, professional fumigant applicators, farm workers, neighbors and community members, local officials, and others. EPA also plans to participate in a stakeholder meeting focusing on risk mitigation options for the soil fumigants metam sodium and metam potassium, held by the California Department of Pesticide Regulation in late May 2007. California and EPA have been working together on soil fumigant issues during the last several years, and use similar approaches to reduce exposure. Stakeholders' comments at these meetings will help inform EPA's decision later this year on the reregistration eligibility of several soil fumigant pesticides. Through the reregistration program, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: The meeting in Richland, Washington will be held on May 22, 2007 from 9 a.m. to 5 p.m. The meeting in Ft. Myers, Florida will be held on June 6, 2007 from 9 a.m. to 5 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request. Spanish language translation will be available at both meetings.

ADDRESSES: The Washington meeting will be held at the Federal Building, 825 Jadwin Avenue, Richland, Washington 99352. The Florida meeting will be held at the Harborside Event Center, 1375 Monroe Street, Ft. Myers, Florida 33901.

FOR FURTHER INFORMATION CONTACT: *For Washington meeting information contact.* Veronique LaCapra, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–1525; fax number: (703) 308–8090; e-mail address: *lacapra.veronique@epa.gov/.*

For Florida meeting information contact. Nathan Mottl, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0208; fax number: (703) 308–7070; e-mail address: *mottl.nathan@epa.gov/.*

For general information contact. John Leahy, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6703; fax number: (703) 308–8090; e-mail address: *leahy.john@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. 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–2007–0343. 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 Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

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 is currently reviewing six soil fumigant pesticides. Four of the six are in review for reregistration, including chloropicrin, dazomet, metam sodium, metam potassium, and methyl bromide. A fifth chemical, iodomethane, is being reviewed for registration and is a possible alternative to methyl bromide. Reregistration for 1,3-dichloropropene (1,3-D or Telone) was completed in 1998, but is included in the review for comparative purposes.

EPA is reviewing the soil fumigant pesticides using the 6-Phase Public Participation Process described in the Agency's May 14, 2004 **Federal Register** notice (69 FR 26819)(FRL–7357–9). During Phase 5, the Agency is issuing for public comment revised risk assessments, benefits assessments, and a paper outlining risk management options for the soil fumigants. To obtain additional, first-hand input from stakeholders, EPA is holding meetings during the Phase 5 public comment period in areas of high soil fumigant use.

EPA will begin each public meeting with a brief overview of predicted risks and benefits of soil fumigant use, as well as possible measures that the Agency expects will reduce risks. After providing guidelines for making comments, the Agency will take comments from the public during the remainder of the day. EPA plans to transcribe the meetings so that comments received can be placed in the docket where they will be available to other members of the public.

EPA also plans to participate in a stakeholder meeting held by the California Department of Pesticide Regulation on May 30, 2007, focusing on California's risk management proposals for soil fumigants that produce MITC, specifically metam sodium and metam potassium. California and EPA have been working together on soil fumigant issues during the last several years. Because the mitigation proposals for these chemicals include similar approaches to reduce exposures, EPA will also consider public comments provided by stakeholders during this meeting. Please visit the California Department of Pesticide Regulation website for more information: *http://www.cdpr.ca.gov/*.

After considering all information and comments received during Phase 5 through the public meetings and the docket, EPA plans to develop risk management decisions for the soil fumigant pesticides later in 2007.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 24, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8277 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0125; FRL–8127–7]

Metam Sodium and Metam Potassium; Revised Human Health Risk Assessment, Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability and seeks comments on EPA's revised human health risk assessment for the pesticide fumigants metam sodium and metam potassium. In addition, this notice solicits public comment on the risk reduction options paper for fumigants including metam sodium and metam potassium and EPA's benefits assessments for the soil fumigants. The Agency is also seeking comments on the ecological risk assessment which was not revised since the last public comment period. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for metam sodium and metam potassium through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. EPA also is concurrently assessing the risks of four other soil fumigant pesticides to ensure that its assessment approaches are consistent, and to ensure that risk tradeoffs and economic outcomes can be adequately predicted in reaching risk management decisions. The Agency is seeking the same input from the public on these pesticides on a similar schedule. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before July 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0125, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0125. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not

know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Veronique LaCapra, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 605-1525; fax number: (703) 308-7070; e-mail address: *lacapra.veronique@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised human health risk assessment and ecological risk assessment, initially issued for comment through a **Federal Register** notice published on July 13, 2005, (70 FR 40333) (FRL–7722–1); a response to comments; and related documents for metam sodium and metam potassium. EPA also is soliciting public comment on the risk reduction options paper and benefits assessments for the soil fumigants. EPA developed the risk assessments for metam sodium and metam potassium as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Metam sodium and metam potassium are non-selective pre-plant soil fumigants with fungicidal, herbicidal, insecticidal, and nematicidal properties. They are registered for use on all food, feed and fiber crops including turf and ornamentals. Metam sodium's major agricultural use sites include potatoes, carrots, tomatoes, onions, and peanuts. Metam potassium's major use sites are lettuce, potatoes, onions, tomatoes, and watermelons. Metam sodium is also registered for use in orchard replant, on golf course turf, and for small areas of turf and soil. In addition, metam sodium is used as a root-control agent in drains and sewers. Metam sodium and metam potassium are also registered for a variety of antimicrobial and industrial uses. Metam sodium and metam potassium are converted to methyl isothiocyanate (MITC) in the environment, particularly in the presence of moisture (such as in soil after application). It is MITC that performs the fumigating activity. The volatility of metam sodium and metam potassium in the environment, and results of metabolism studies in plants, assure that there is no reasonable expectation of finite residues to be incurred in/on any raw agricultural commodity when the products are applied according to label directions.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for metam sodium and metam potassium. Risks of concern associated with the use of metam sodium and metam potassium include

bystander and worker risks. A complete list of the risks and the mitigation options can be found in the Risk Mitigation Options Document docket number EPA–HQ–OPP–2005–0125. A Readers Guide has been created to provide an organizational structure to the metam sodium and metam potassium docket, to allow readers to more easily access and navigate the various entries contained in the metam sodium and metam potassium docket, and to facilitate public comment. You may find this guide in docket number EPA–HQ–OPP–2005–0125. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, metam sodium and metam potassium are being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for metam sodium and metam potassium. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the metam sodium and metam potassium RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 25, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8269 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0128; FRL–8126–7]

Dazomet Revised Human Health Risk Assessment; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability and seeks comments on EPA's revised human health risk assessment for the pesticide fumigant dazomet. In addition, this notice solicits public comment on the risk reduction options paper for dazomet and EPA's benefits assessments for the soil fumigants. The Agency is also seeking comments on the ecological risk assessment. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for dazomet through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. EPA also is concurrently assessing the risks of five other soil fumigant pesticides to ensure that its assessment approaches are consistent, and to ensure that risk tradeoffs and economic outcomes can be adequately predicted in reaching risk management decisions. The Agency is seeking the same input from the public on these pesticides on a similar schedule. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before July 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0128, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0128. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

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

FOR FURTHER INFORMATION CONTACT:

Cathryn O'Connell, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–7070; e-mail address: *oconnell.cathryn@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised human health risk assessment and ecological risk assessment, initially issued for comment through a **Federal Register** notice published on July 13, 2005 (70 FR 40339)(FRL–7721–8); a response to comments; and related documents for dazomet. EPA also is soliciting public comment on the risk reduction options paper and the benefits assessments for the soil fumigants. EPA developed the risk assessments for dazomet as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Dazomet is used as non-selective pre-plant soil fumigant with fungicidal, herbicidal, insecticidal, and nematicidal properties. It is used on strawberries, tomatoes, golf greens/tees, nonbearing crops, turf sites, ornamental sites, field nurseries, compost piles, and potting soils. Typical applications are made prior to planting to sterilize the soil. Dazomet may also be applied in a variety of industrial places such as paper mills, oilfield drilling muds and work over or completion fluids, and recirculating cooling water systems to control slime forming and/or spoilage bacteria. Dazomet is converted to methyl isothiocyanate (MITC) in the environment, particularly in the presence of moisture, such as in soil after application. It is MITC that performs the fumigating activity. The volatility of dazomet in the environment and results of metabolism studies in plants assure that there is no reasonable expectation of finite residues to be incurred in/on any raw agricultural commodity when the products are applied according to label directions.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for dazomet. Risks of concern associated with the use of dazomet include bystander and worker risks. A complete list of the risks and the mitigation options can be found in the Risk Mitigation Options Document (docket number EPA–HQ–OPP–2005–0128-0030). A Readers Guide has been created to provide an organizational structure to the dazomet docket, to allow readers to more easily access and navigate the various entries contained in the dazomet docket, and to facilitate public comment. You may find this guide at document number EPA–HQ–OPP–2005–0128-0029. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, dazomet is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for dazomet. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the dazomet RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 25, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8274 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0123; FRL–8124–8]

Methyl Bromide Revised Human Health Risk Assessment for Soil, Greenhouses, and Residential/ Structural Uses, Notice of Availability, and Solicitation of Risk Reduction Options (Phase 5 of 6-Phase Process)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability and seeks comments on EPA's revised human health risk assessment for the pesticide methyl bromide. In addition, this notice solicits public comment on two risk mitigation options documents for methyl bromide and EPA's preliminary benefits assessments. The Agency is also seeking comments on the ecological risk assessment which, based on public comments in phase 3, was not revised. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for the methyl bromide soil, greenhouses, and residential/ structural uses through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. EPA completed a red for commodity uses of methyl bromide, including uses that have tolerances, in August 2006. EPA also is concurrently assessing the risks of five other fumigant pesticides that also have soil uses to ensure that its assessment approaches are consistent, and to ensure that risk tradeoffs and economic outcomes can be adequately predicted in reaching risk management decisions. The Agency is seeking the same input from the public on these pesticides. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before July 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0123, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0123. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Steven Weiss, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8293; fax number: (703) 308-8005; e-mail address: *weiss.steven@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all

the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised human health risk assessment and ecological risk assessment, initially issued for comment through a **Federal Register** notice published on July 13, 2005 (70 FR 40336)] [(FRL–7721–3)]; a response to comments; and related documents for methyl bromide. EPA also is soliciting public comment on two risk mitigation options documents and benefits assessments for methyl bromide. EPA developed the risk assessments for methyl bromide as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Methyl bromide is primarily used on terrestrial non-food use sites but other commonly treated sites include indoor food and non-food use sites, residential settings, and commercial/industrial facilities. Strawberries (54 percent), eggplant (43 percent), peppers (17 percent), and tomatoes (13 percent) are the crops with the highest percentage of their overall acreage treated.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for methyl bromide. Risks of concern associated with the use of methyl bromide include bystander risks which exceed the Agency's level of concern for several scenarios. Bystanders would include any person living, working, or located near a fumigant application that may be exposed to emissions coming off the treated area (e.g., field). Worker risks also exceed Agency's level of concern for the majority of scenarios considered, even when appropriate mitigation measures were considered (e.g., respirators and emission reduction technology such as tarps). Acute risks to birds and mammals do not exceed the Agency's level of concern. However, there is a potential for exposure over a prolonged period. For aquatic organisms, the only aquatic LOC exceeded is the acute endangered species LOC for aquatic invertebrates. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, methyl bromide is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for methyl bromide. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the methyl bromide RED for soil, greenhouses, and residential/structural uses.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 17, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8275 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0350; FRL–8125–9]

Chloropicrin Revised Risk Assessments; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the pesticide chloropicrin. In addition, this notice solicits public comment on risk reduction options paper for chloropicrin

and a preliminary benefits assessment. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for chloropicrin through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. EPA is also concurrently assessing the risks of five other soil fumigant pesticides to ensure that its assessment approaches are consistent and to ensure that risk tradeoffs and economic outcomes can be adequately predicted in reaching management decisions. The Agency is seeking the same input for the other soil fumigants on a similar schedule. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before July 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0350, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0350. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Nathan Mottl, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0208; fax number: (703) 308-7070; e-mail address: *mottl.nathan@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, previously issued for comment through a **Federal Register** notice published on November 29, 2006 (Vol. 71 FR 69112) (FRL–8087–4); response to comments documents; and related documents for chloropicrin. EPA is also soliciting public comment on a risk reduction options paper for chloropicrin and preliminary benefits assessments. EPA developed the risk assessments for chloropicrin as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Chloropicrin is a non-selective pre-plant soil fumigant with fungicidal, herbicidal, insecticidal, and nematicidal properties. Chloropicrin is also used in combination with other soil fumigants and as a warning agent for other soil fumigants such as methyl bromide and telone (1,3-Dichloropropane). Chloropicrin is primarily used for pre-plant soil uses for agricultural crops and greenhouses. However, chloropicrin is also used for fumigations for empty grain and storage bins, tree replant sites, and wood telephone poles and timber. An estimated 5-9 million pounds of chloropicrin is applied annually. Crops for which over a million pounds of chloropicrin are used annually include tobacco (3.6 million pounds), tomatoes (1.7 million pounds), and strawberries (1.4 million pounds). Strawberries (20 percent), tobacco (15 percent), and tomatoes (10 percent) are the crops with the highest percentage of their overall acreage treated. Many of the pre-plant soil fumigation uses of chloropicrin are used in combination with either methyl bromide or telone.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for chloropicrin. Risks of concern associated with the use of chloropicrin are: bystander inhalation exposure risk, worker inhalation risk, and ecological risk. Bystanders would include any person living, working, or located near a fumigant application that may be exposed to emissions coming off the treated field. A complete list of the risks and the mitigation options can be found in the Risk Mitigation Options Document (available at ID number EPA-HQ-OPP-2007-0350-0003). A Readers Guide has been created to provide and organizational structure to the chloropicrin docket, to allow readers to more easily access and navigate the various entries contained in the chloropicrin docket, and to facilitate public comment. You may find this guide at ID number EPA-HQ-OPP-2007-0350-0002. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, chloropicrin is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for chloropicrin. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue for comment the chloropicrin RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 22, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8371 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0124; FRL–8125[dash]7]

1,3-Dichloropropene (1,3-D) Revised Human Health Risk Assessment, Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability and solicitation of comments on the EPA's revised human health risk assessment for the soil fumigant 1,3-Dichloropropene (1,3-D), which is commonly referred to as telone. In addition, this notice seeks public comment on the risk reduction options paper and EPA's benefits assessments for the soil fumigant group. The Agency is also seeking comments on the 1,3-D ecological risk assessment which, based on public comments in phase 3, was not revised. Although 1,3-D has undergone reregistration and a Reregistration Eligibility Decision was published in December 1998, EPA is concurrently assessing six soil fumigants to ensure that its risk assessment approaches are consistent, and to ensure that risk tradeoffs and economic outcomes can be adequately predicted in reaching risk management decisions for the five other soil fumigants. The Agency is seeking the same input from the public on these pesticides. EPA has developed a revised human health risk assessment for 1,3-D and is seeking comment through a public participation process in order to make available current and accurate information on this pesticide.

DATES: Comments must be received on or before July 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0124, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2005–0124. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Andrea Carone, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number:703-308-0122; fax number: (703) 308-8005; e-mail address: *carone.andrea@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised human health risk assessment, initially issued for comment through a **Federal Register** notice published on July 13, 2005 (70 FR 40342) (FRL–7721–9); a response to comments; and related documents for 1,3-D. EPA also is soliciting public comment on the risk reduction options paper and the benefits assessments for the soil fumigant group. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

1,3-D is applied to control root-knot nematodes and certain pests and diseases in the soil prior to the planting of a variety of food and feed crops including vegetables, fruits, nuts, and other field and nursery crops. In addition there is a proposed new use for post-plant drip irrigation in established vineyards. 1,3-D is also a restricted use pesticide and as such can only be applied by certified applicators or those under the supervision of a certified applicator. End-use product formulations containing 1,3-D may be applied through drip irrigation or by injection below the soil surface either in rows or broadcast across an area.

1,3-D was deemed eligible for reregistration in December 1998. The volatility of 1,3-D in the environment and results of metabolism studies in plants assure that there is no reasonable expectation of finite residues to be incurred in/on any raw agricultural commodities when end-use product formulations containing 1,3-D are applied according to label directions. Therefore, this fumigant does not require food tolerances.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for the soil fumigant group. A complete list of the mitigation options can be found in the following document, ''Risk Mitigation Options to Address Bystander and Occupational Exposures from Soil Fumigant Applications,'' docket number EPA–HQ–OPP–2005–0124-0048. A Reader's Guide has been created to provide an organizational structure to the 1,3-D Docket, to allow readers to more easily access and navigate the various entries contained in the 1,3-D Docket, and to facilitate public comment. You will find this guide at EPA–HQ–OPP–2005–0124-0046. EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide.

Although 1,3-D has undergone reregistration, the Agency plans to follow a similar public participation process for the human health revised risk assessment to ensure that the risk assessment approaches are consistent, and that risk management decisions for the five other soil fumigants consider the relative risks and benefits of each chemical. While the Agency does not anticipate making changes to the decisions made in the 1998 RED, if, at the conclusion of the soil fumigant assessment and risk management process, EPA determines that it is appropriate to modify its 1998 risk mitigation decision for 1,3-D considering the relative risks and benefits of others, EPA may relax certain measures or consider adding new ones.

All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for 1,3-D. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

1,3-D was deemed eligible for reregistration in December 1998. EPA has developed a revised human health risk assessment for 1,3-D to assess the proposed post-plant use in established vineyards, and also in order to make available current and accurate information on this pesticide which will be considered as EPA assesses risk and develops risk management decisions for the five other soil fumigants.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 19, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8390 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0099; FRL–8126–4]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before June 1, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0099, by one of the following methods:

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

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

<bullet≤ *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Room S-4400, One Potomac Yard (South Bldg.), 2777 South Crystal Dr., Arlington, VA 22202–3553. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0099. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. 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 Room S-4400, One Potomac Yard (South Bldg.), 2777 South Crystal Dr., Arlington, VA 22202–3553. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; e-mail address: *rodia.carmen@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:

<bullet≤ Crop production (NAICS code 111).

<bullet≤ Animal production (NAICS code 112).

<bullet≤ Food manufacturing (NAICS code 311).

<bullet≤ Pesticide manufacturing (NAICS code 32532).

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

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 71711–EA. *Applicant*: Bayer CropScience, LP in c/o Nichino America, Inc., U.S. subsidiary of Nihon Nohyaku Co., Ltd., P.O. Box 12014, Research Triangle Park, NC 27709–2014. *Product Name*: Flubendiamide Technical. *Product type*: Insecticide. *Active Ingredient*: Flubendiamide. *Proposal Classification/Use*: For formulation into end-use products.

2. *File Symbol*: 264–RNEA. *Applicant*: Bayer CropScience, LP, P.O. Box 12014, Research Triangle Park, NC 27709–2014. *Product Name*: NNI-0001 24 WG (SYNAPSE). *Product type*: Insecticide. *Active Ingredient*: Flubendiamide at 24%. *Proposal Classification/Use*: Insecticide for controlling lepidopterous insect pests on vegetables (Brassica (cole) leafy, fruiting, leafy (except Brassica) and cucurbit).

3. *File Symbol*: 264–RNEL. *Applicant*: Bayer CropScience. *Product Name*: NNI-0001 480 SC (BELT). *Product type*: Insecticide. *Active Ingredient*: Flubendiamide at 39%. *Proposal Classification/Use*: Insecticide for controlling lepidopterous insect pests on pome and stone fruit, nut trees, grapes, corn, cotton and tobacco.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 19, 2007.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–8268 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0874; FRL–8126–9]

Chlorflurenol; Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide chlorflurenol. The Agency's risk assessments and other related documents also are available in the chlorflurenol docket. Chlorflurenol is an herbicide and a plant growth regulator registered for use in agricultural, commercial, and residential settings. Chlorflurenol has no food/feed uses and, therefore, has no tolerances associated with its use. EPA has reviewed chlorflurenol through the public participation process that the Agency uses to involve the public in developing pesticide reregistration decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Tracy L. Perry, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-1028; fax number: (703) 308-8005; e-mail address: *perry.tracy@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. 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–2006–0874. 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 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?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, chlorflurenol under section 4(g)(2)(A) of FIFRA. Chlorflurenol is a plant growth regulator and an herbicide with no food/feed uses and, therefore, no tolerances associated with its use. It is used for the postemergent control of broadleaf weeds in turf, and to retard the growth of ornamental turf/trees, and vegetation in nonagricultural rights-of-way and forest management areas. Chlorflurenol is also used to stimulate the growth of pineapple planting material or sliplets. The Agency does not consider this use on pineapples to be a food use, as the first harvest from chlorflurenol-treated planting material occurs well over one year after planting. EPA has determined that the data base to support reregistration is sufficently complete and that products containing chlorflurenol are eligible for reregistration, provided that the risk mitigation measures identified in the RED document are adopted and label amendments are made to reflect these measures. Upon submission of any required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing chlorflurenol.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, chlorflurenol was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for chlorflurenol.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Few substantive comments were received during the Phase 3, 60–day comment period for chlorflurenol, and all issues related to this pesticide were resolved through consultations with stakeholders. The Agency therefore is issuing the chlorflurenol RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 25, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8265 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0008; FRL–8122–5]

Lime-sulfur (Inorganic polysulfides); Reregistration Eligibility Decision for Low Risk Pesticide; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide lime-sulfur (inorganic polysulfides also called calcium polysulfide), and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the low risk pesticide lime-sulfur (inorganic polysulfides) through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before July 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0008, by one of the following methods:

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

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

<bullet≤ *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries

are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0008. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Bentley C. Gregg, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8178; fax number: (703) 308-7070; e-mail address: *gregg.bentley@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?

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2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the low risk pesticide, lime-sulfur (inorganic polysulfides also called calcium polysulfide) under section 4(g)(2)(A) of FIFRA. Lime-sulfur is a fungicide applied primarily in agricultural and residential settings, used to apply a liquid form of inorganic sulfur to growing crops and other sites. EPA has determined that the data base to support reregistration is substantially complete and that products containing lime-sulfur (inorganic polysulfides) will be eligible for reregistration. Upon submission of the required product specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing Lime-sulfur (Inorganic polysulfides).

EPA must review the exemptions from the requirement for a tolerance that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the exemption from the requirement for a tolerance for lime-

sulfur (inorganic polysulfides) included in this notice.

Although the lime-sulfur (inorganic polysulfides) RED was signed on September 30, 2005, certain components of the document, which did not affect the final regulatory decision, were undergoing final editing at that time. These components, including the summary of labeling changes, appendices, and other relevant information, have been added to the lime-sulfur (inorganic polysulfides) RED document. In addition, subsequent to signature, EPA identified some minor errors and ambiguities in the document. Therefore, for the sake of accuracy, the Agency also has included the appropriate error corrections, amendments, and clarifications. None of these additions or changes alter the conclusions documented in the September 30, 2005, lime-sulfur (inorganic polysulfides) RED. All of these changes are described in detail in an errata memorandum which is included in the public docket for lime-sulfur (inorganic polysulfides).

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like lime-sulfur (inorganic polysulfides), which pose few or no risk concerns, affect few stakeholders, and require no risk mitigation. Once EPA assesses uses and risks for such low risk pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the lime-sulfur (inorganic polysulfides) RED.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. lime-sulfur (inorganic polysulfides), however, poses no risks that require mitigation. The Agency therefore is issuing the lime-sulfur (inorganic polysulfides) RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for lime-sulfur (inorganic polysulfides). Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the lime-sulfur (inorganic polysulfides) RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 12, 2007.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E7–8276 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0305; FRL–8125–1]

Metaflumizone; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Georgia Department of Agriculture to use the pesticide metaflumizone (CAS No. 139968–49–3) to treat up to 31,000 acres of Brassica leafy vegetables to control the diamondback moth. The Applicant proposes the use of a new chemical which has not been registered by EPA. Therefore, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 1, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0305, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0305. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access''

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

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

FOR FURTHER INFORMATION CONTACT:

Andrea Conrath, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; fax number: (703) 605–0781; e-mail address: *conrath.andrea@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:

<bullet≤ Crop production (NAICS code 111).

<bullet≤ Animal production (NAICS code 112).

<bullet≤ Food manufacturing (NAICS code 311).

<bullet≤ 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.

II. Background

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. Georgia Department of Agriculture has requested the Administrator to issue a specific exemption for the use of metaflumizone on Brassica leafy vegetables to control the diamondback moth. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that the available alternative controls are no longer providing adequate control, and states that resistance to some of them may be developing. The Applicant claims that another control chemical is needed to use in rotation with registered materials, to maintain season long control of the diamondback moth in these crops, and that without adequate control, significant economic losses will be suffered.

The Applicant proposes to make no more than 4 applications of metaflumizone, at a rate of 0.25 lb. active ingredient per acre (no more than 1.0 lbs. a.i. total), on up to 31,000 acres of Brassica leafy vegetables (including but not limited to cabbage, collard greens, mustard greens, kale) and turnip greens, in Georgia, for use year round, resulting in use of up to a total of 31,000 lbs. a.i. total.

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 Georgia Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 24, 2007.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E7–8266 Filed 5–1–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Submitted for Review to the Office of Management and Budget

April 25, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before June 1, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet Seehra, Office of Mangement and Budget (OMB), Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via fax at (202) 395–5167 or via Internet at *Jasmeet—K.—Seehra@omb.eop.gov*, and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC's PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0463.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 5,045.

Estimated Time per Response: 6 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Every five years reporting requirement; Annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 25,717 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personal identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Statute 327, 366–69, was enacted on July 26, 1990. The purpose of the ADA is to provide a clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life; to provide enforceable standards addressing discrimination against individuals with disabilities; and to ensure that the Federal government play a central role in enforcing these standards on the behalf of individuals with disabilities. Title IV of the ADA adds § 225 to the Communications Act of 1934. Section 225 of the Communications Act, requires the Commission to promulgate regulations that require all domestic telephone common carriers to provide telecommunications relay services (TRS). 47 CFR part 64, subpart F of the Commission's rules, implements certain provisions of the ADA. It contains the operational, technical, and functional standards required of all TRS providers and the procedures for state certification. Although § 225 of the Communications Act imposes on all common carriers providing interstate or intrastate telephone services an obligation to provide to hearing and speech-impaired individuals telecommunications services that enable them to communicate with hearing individuals, and charges the Commission with regulatory oversight, states may seek to establish intrastate relay services that satisfy Federal requirements.

Pursuant to 47 CFR 64.602 Commission's rules, any violation of subpart F by any common carrier engaged in intrastate communications will be subject to the same remedies, penalties, and procedures as are applicable in interstate communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–8286 Filed 5–1–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

April 25, 2007

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 2, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your all Paperwork Reduction Act (PRA) comments by e-mail or U.S. postal mail. To submit your comments by e-mail send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW, Washington, DC 20554 and Jasmeet Seehra, OMB Desk Officer, Office of Management and Budget (OMB), Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via Internet at *Jasmeet—K.—Seehra@omb.eop.gov* or via fax at (202) 395–5167. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC's PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0560.

Title: Section 76.911, Petition for Reconsideration Certification.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 25.

Estimated Time per Response: 10–12 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 210 hours.

Total Annual Cost: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.911(a) states a cable operator (or other interested party) may challenge a franchising authority's certification by filing a petition for reconsideration pursuant to § 1.106. The petition may allege either of the following:

(1) The cable operator is not subject to rate regulation because effective competition exists as defined in § 76.905. Sections 76.907(b) and (c) apply to petitions filed under this section.

(2) The franchising authority does not meet the certification standards set forth in 47 U.S.C. 543(a)(3).

47 CFR 76.911(b)(2) states a petitioner filing pursuant to paragraph (a)(2) of this section may request a stay of rate regulation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–8287 Filed 4–30–07; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 27, 2007

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 1, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via internet at *Jasmeet—K.—Seehra@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1030.

Title: Service Rules for Advanced Wireless Services in 1.7 GHz and 2.1 GHz Bands.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 904 respondents; 1,122 responses.

Estimated Time per Response: .25 hours–5 hours.

Frequency of Response: Semi-annual and on occasion reporting requirement, recordkeeping requirement, and third party requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 29,147 hours.

Total Annual Cost: $2,721,200.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality except as follows: The clearinghouses have committed, pursuant to the FCC's directive, to implement safeguards to maintain the confidentiality of information where necessary to protect respondents' legitimate commercial interests. Additionally, the Ninth Report

and Order protects the specific location of incumbent BRS licensees' end-user/subscriber equipment, customer names, addresses and contact for purpose of relocation, which could raise competitive concerns. The Commission's rules permit parties filing information with the Commission to request confidential treatment of that information under 47 CFR 0.459.

Needs and Uses: The Commission will submit this information collection to OMB as a revision during this comment period to obtain the full three-year clearance from them. The Commission has changed the number of respondents, total annual burden hours and annual costs.

The Commission adopted and released a Ninth Report and Order in FCC 06–45, ET Docket No. 00–258 and WT Docket No. 02–353 which adopted disclosures related to negotiation and relocation of incumbent Fixed Microwave Service (FS) radio links and incumbent Broadband Radio Service (BRS) systems, and for the registration of these relocation expenses with a clearinghouse, including documentation of reimbursable costs for FS and BRS relocations, documentation when a new Advanced Wireless Services (AWS) and Mobile Satellite Service Ancillary Terrestrial Components (MSS/ATC) operators trigger a cost-sharing obligation, prior coordination notices to identify when a specific site will trigger a cost-sharing obligation, and retention of records by the clearinghouses.

Privately administered clearinghouses, selected by the FCC, will keep track of and administer the cost sharing obligations over the next 10–15 years as AWS and MSS–ATC operators build new stations that require them to relocate incumbents.

In a Public Notice issued jointly with the National Telecommunications and Information Administration (NTIA), the FCC sets forth procedures for AWS licensees to coordinate with Federal Government operators in the 1.7 GHz band, and AWS licenses are granted with a special condition that requires coordination with Federal operators.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E7–8361 Filed 5–1–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PS Docket No. 07–69; DA No. 07–1631]

City of Boston and Sprint Nextel Corporation

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing before an administrative law judge to resolve specific, disputed 800 MHz rebanding issues between the City of Boston and Sprint Nextel Corporation. The hearing will be held at a time and place to be specified in a subsequent order.

DATES: Persons desiring to participate as parties in the hearing (other than the City of Boston and Sprint Nextel Corporation, who already are specified as a parties in the hearing) shall file a petition for leave to intervene not later than June 1, 2007.

ADDRESSES: Please file documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Each document that is filed in this proceeding must display on the front page the document number of this hearing, ''EB Docket No. 07–13.''

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Attorney-Advisor, Public Safety and Homeland Security Bureau, (202) 418–1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, DA 07–1631, released on April 5, 2007. The full text of the Order to Show Cause is available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Thursday, or from 8 a.m. to 11:30 a.m. on Friday, at the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate document number, DA 07–1631. The Order to Show Cause also is available on the internet at the Commission's Web site through its Electronic Document Management System (EDOCS). The Commission's internet address for EDOCS is: *http://hraunfoss.fcc.gov/edocs—public/SilverStream/Pages/edocs.html.* Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format). Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

Summary of the Hearing Designation Order

In the Hearing Designation Order, the Federal Communications Commission's Public Safety and Homeland Security Bureau, pursuant to delegated authority under § 90.677(d)(2) of the Commission's Rules, 47 CFR 90.677(d)(2), commences a hearing proceeding before an administrative law judge to determine three issues: (a) To determine, in the matter of the Boston Police Department mediation, whether Sprint Nextel is obligated to pay the City of Boston for inventory-tracking and management software from MCM Technology, LLC, and, if so, the amount of such payment, (b) to determine, in the matter of the City of Boston mediation case, whether Sprint Nextel is obligated to pay the City of Boston for inventory-tracking and management software from MCM Technology, LLC, and, if so, the amount of such payment, and (c) to determine, in the matter of the City of Boston mediation, the appropriate contractual language to govern the change order process in the Frequency Reconfiguration Agreement entered into between the City of Boston and Sprint Nextel.

The hearing will be held at a time and place to be specified in a subsequent order. Copies of the Hearing Designation Order are being sent via Certified Mail—Return Receipt Requested, to: The City of Boston, c/o Robert H. Schwaninger, Jr., Esq., Schwaninger and Associates, P.C., 1331 H Street, NW., Suite 500, Washington, DC 20005; and to Sprint Nextel, c/o Stacey Lantange, Esq., Drinker Biddle & Reath, LLP, 1500 K Street, NW., Suite 1100, Washington, DC 20005–1209.

Federal Communications Commission.

David L. Furth,

Associate Bureau Chief, Public Safety and Homeland Security Bureau.

[FR Doc. E7–8199 Filed 5–1–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 00–167; DA 07–1716]

Commission Seeks Comment on the Status of Children's Television Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comment on the status of children's television programming, and compliance with the Children's Television Act (''CTA'') and the Commission's rules. The Commission takes steps to ensure that its review of each television broadcast license renewal application, has ''served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.''

DATES: Comments for this proceeding are due on or before June 1, 2007; reply comments are due on or before June 18, 2007.

ADDRESSES: You may submit comments, identified by MM Docket No. 00–167, by any of the following methods:

<bullet≤ Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

<bullet≤ Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.

<bullet≤ People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120. Press inquiries should be directed to Clyde Ensslin, (202) 428–0506. TTY: (202) 418–7172 or (888) 835–5322.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 07–1716 released on April 17, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of the Notice

1. In this Public Notice, we seek comment on the status of children's television programming, and compliance with the Children's Television Act (''CTA'') and the Commission's rules.

2. The CTA requires the Commission, in its review of each television broadcast license renewal application, to ''consider the extent to which the licensee * * * has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.'' In enacting the CTA, Congress found that, while television can benefit society by helping to educate and inform children, there are significant market disincentives for commercial broadcasters to air children's educational and informational programming. The objective of Congress in enacting the CTA was to increase the amount of educational and informational programming available on television. The CTA accomplished that objective by placing on every licensee an obligation to provide such programming, including programming specifically designed to educate and inform children, and by requiring the FCC to enforce that obligation.

3. In November 2004, the Commission released a *Report and Order and Further Notice of Proposed Rule Making (''2004 Order'')* in MM Docket No. 00–167, Children's Television Obligations of Digital Television Broadcasters. The *2004 Order* addressed matters related to the obligation of television licensees to provide educational programming for children and the requirement that television licensees protect children from excessive and inappropriate commercial messages. In September 2006, the Commission released a *Second Order on Reconsideration and Second Report and Order (''2006 Order'')*, which adopted the recommendations of a Joint Proposal submitted by representatives of the broadcast and cable industries and public interest groups involved in children's television issues. This *2006 Order* modified and clarified the rules adopted in the *2004 Order*.

4. As part of the *2004 Order*, the Commission indicated that it intended to issue a Public Notice ''seeking comment on whether broadcasters are complying with the letter and intent of the CTA in terms of, among other things, the amount and quality of core children's programming being provided and the extent of preemption of such programming.'' More recently, the Commission entered into a Consent Decree with Univision to resolve petitions to deny filed against pending license renewal applications. Petitioners alleged that certain Univision stations did not comply with the children's programming rules, claiming that the programs relied upon as ''core'' did not serve the educational and informational needs of children.

5. This Public Notice is being issued in furtherance of the *2004 Order*. We invite comment regarding the state of children's television programming. Are licensees complying with the CTA? Does the programming that licensees have reported as core children's programming generally meet the Commission's standards? Educational and informational television programming is defined by the Commission as:

> Any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children ('Core Programming') is educational and informational programming that satisfies the following additional criteria:
>
> (1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;
>
> (2) It is aired between the hours of 7 a.m. and 10 p.m.;
>
> (3) It is a regularly scheduled weekly program;
>
> (4) It is at least 30 minutes in length;
>
> (5) The program is identified as specifically designed to educate and inform children by the display on the television screen throughout the program of the symbol E/I;
>
> (6) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in section 73.3526(e)(11)(iii) of the Commission's rules; and
>
> (7) Instructions for listing the program as educational/ informational, including an indication of the age group for which the program is intended, are provided by the

licensee to publishers of program guides, as described in section 73.673 of the Commission's rules.

6. Are the core programming criteria listed in the Commission's rules adequate to properly define educational and informational programming? Do these criteria fulfill the requirements of the CTA? Should the Commission consider additional criteria? Does the current level of preemption affect compliance with the CTA and Congressional intent? In what other ways are licensees complying, or not, with the CTA and the Commission's rules related to children's programming?

7. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

8. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must be submitted in MM Docket No. 00–167. Pleadings sent via e-mail to the Commission will be considered informal and will not be part of the official record. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

<bullet≤ 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 website for submitting comments.

<bullet≤ For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number: MM Docket No. 00–167. 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 instructions will be sent in response.

<bullet≤ Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

<bullet≤ 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.

<bullet≤ 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.

<bullet≤ U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

<bullet≤ People with Disabilities: To request materials in accessible formats for persons with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or contact the Consumer and Governmental Affairs Bureau at (202) 418–0530 or (202) 418–7365 (TTY).

<bullet≤ Copies of any filed documents in this matter are also available for inspection in the Commission's Reference Information Center: 445 12th Street, SW., Washington, DC 20554, (202) 418–7092.

Federal Communications Commission.

Mary Beth Murphy,

Chief, Policy Division, Media Bureau.

[FR Doc. E7–8300 Filed 5–1–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011284–061.

Title: Ocean Carrier Equipment Management Association Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S trading under the name of Maersk Line; CMA CGM, S.A.; Atlantic Container Line; Companhia Libra de Navegacao; Compania Libra de Navegacion Uruguay S.A.; Compania Sudamericana de Vapores, S.A.; COSCO Container Lines Company Limited; Crowley Maritime Corporation; Evergreen Line Joint Service Agreement; Hamburg-S[uuml]d; Hapag-Lloyd AG; Hapag-Lloyd USA LLC; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co. Ltd.; Kawasaki Kisen Kaisha, Ltd.; Mitsui O.S.K. Lines Ltd.; Nippon Yusen Kaisha Line; Norasia Container Lines Limited; Orient Overseas Container Line Limited; and Yang Ming Marine Transport Corp.

Filing Party: Jeffrey F. Lawrence, Esq. and Donald J. Kassilke, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Zim Integrated Shipping Services, Ltd. as a party to the agreement.

Agreement No.: 011980–001.

Title: South Atlantic Chassis Pool Agreement.

Parties: The Ocean Carrier Equipment Management Association and its member lines; the Association's subsidiary Consolidated Chassis Management LLC and its affiliates; Georgia Ports Authority; and South Carolina State Ports Authority.

Filing Party: Jeffrey F. Lawrence, Esq. and Donald J. Kassilke, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment would add Evergreen Line Joint Service Agreement, already a member of the Ocean Carrier Equipment Management Association, as a member to the agreement.

Agreement No.: 201103–006.

Title: Memorandum Agreement of the Pacific Maritime Association of December 14, 1983 Concerning Assessments to Pay ILWU–PMA Employee Benefit Costs, As Amended, Through April 19, 2007.

Parties: Pacific Maritime Association and International Longshore and Warehouse Union.

Filing Party: Matthew J. Thomas, Esq.; Troutman Sanders LLP; 401 9th Street,

NW., Suite 1000; Washington, DC 20004–2134.

Synopsis: The amendment adjusts the man-hour assessment rate formula under the agreement.

Dated: April 27, 2007.

By order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–8369 Filed 5–1–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 016594NF.
Name: Asean Logistics, Inc.
Address: 2400 West Carson Street, Suite 220, Torrance, CA 90501.
Date Revoked: April 19, 2007.
Reason: Failed to maintain valid bonds.

License Number: 020119F.
Name: Express Forwarding, Inc.
Address: 12738 N. Florida Avenue, Tampa, FL 33612.
Date Revoked: April 19, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003268F.
Name: Rialto International, Inc. dba Rialto Ocean Express.
Address: 4636 East Marginal Way South, Ste. 201, Seattle, WA 98134.
Date Revoked: March 31, 2007.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–8380 Filed 5–1–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/address	Date reissued
017269N	Fastmark Corporation, 8410 NW 70th Street, Miami, FL 33166	April 11, 2007.
020035NF	Latek Logistics USA Inc., 175–18 147th Avenue, Jamaica, NY 11434	March 29, 2007.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–8393 Filed 5–1–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

John M. Crawley, LLC dba Sojourn Marine dba JMC Global, 42 Riva Row, The Woodlands, TX 77380, Officers: John M. Crawley, Managing Partner (Qualifying Individual), Linda Crawley, Partner.

Orca Int'l Freight Forwarders Inc., 6993 NW., 50th Street, Miami, FL 33166, Officers: Paul E. Rodriguez, President (Qualifying Individual), Marlene Robles, Vice President.

Argo Logistics, 38 Dogwood Drive, Edison, NJ 08820, Shalva G. Pirtshalava, Sole Proprietor.

North Star Container, LLC, 1400 Metro Blvd., Suite 190, Edina, MN 55439, Officers: Roland Henneberger, Chief Logistics Officer (Qualifying Individual), Craig Damstrom, CEO.

JH International Shipping, Inc., 437 Rozzi Place, ı115, S. San Francisco, CA 94080, Officers: Sang Bae Noh, President (Qualifying Individual), AE Sook Noh, Secretary.

Expotrans International Inc., 1, Whitford Court, Brampton, Ontario, L6R 252 Canada, Officer: Bimal Fernando, President (Qualifying Individual).

PJT Logistics Service Inc., 90 Jacobus Avenue, South Kearny, NJ 07032, Officers: James G. Tabano, President (Qualifying Individual), Peter J. Toscano, Vice President.

SJT Trading Corp., 6500 NW. 72 Avenue, Miami, FL 33166, Officers: Edith Velasco, Secretary (Qualifying Individual), Leandro Camarolta, President.

Esolutions Logistics, Inc., 8717 Aviation Blvd., Inglewood, CA 90301, Officer: Tan Sek, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Absolute Shipping LLC, 701 Newark Avenue, Suite LL1, Elizabeth, NJ 07208, Officer: Steven De Core, President (Qualifying Individual).

Ten Dragons Logistics Corp., 24051 Lapwing Lane, Laguna Niguel, CA 92677, Officer: William L. Yonan, President (Qualifying Individual).

E-Cargo International Group, 6600 NW. 82 Avenue, Miami, FL 33166, Officers: Edward Negron, Secretary (Qualifying Individual), Lupe Dovi, President.

KSI Corp. dba KSI Container Line, 5000 Shoreline Court, Suite 210, So. San Francisco, CA 94080, Officers: James C. Wu, Vice President (Qualifying Individual), Carl Bellante, CEO.

Accelerated International Forwarders, LLC, 3726 Lake Avenue, Fort Wayne, IN 46805, Officers: Jamal Outa, Managing Member (Qualifying Individual), Katreen Outa, Member.

Zai Cargo, Inc., 8229 NW. 66th, Miami, FL 33166, Officer: Horacio Zapata, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Seattle Export Shippers' Association, 3629 Duwamish Avenue S, Seattle, WA 98134, Officers: Dale Frazier, Exec. Director (Qualifying Individual), Paul Meyer, President.

Dated: April 27, 2007.

Bryant L.VanBrakle,

Secretary.

[FR Doc. E7–8392 Filed 5–1–07; 8:45 am]

BILLING CODE 6730–01–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 May 17, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Ardella Pecha, Arcadia, Florida; Archie Pecha, Arcadia, Florida; Cindy Dachel, Capitola, California; Terry Pecha, Bloomer, Wisconsin; Todd Pecha, Bloomer, Wisconsin; Melanie Pecha–Rubenzer, Bloomer, Wisconsin; and Rhonda Prince, Bloomer, Wisconsin, as a Group Acting in Concert; to acquire voting shares of Bloomer Bancshares, Inc., Bloomer, Wisconsin, and thereby indirectly acquire voting shares of Peoples State Bank of Bloomer, Bloomer, Wisconsin.

Board of Governors of the Federal Reserve System, April 27, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–8346 Filed 5–1–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center 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 May 29, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Buckhead Community Bancorp, Inc., Atlanta, Georgia; to merge with Allied Bancshares, Inc., and thereby indirectly acquire First National Bank of Forsyth County, both of Cumming, Georgia.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Community First Bancshares, Inc., Harrison, Arkansas; to acquire additional voting shares, and also retain ownership of up to 23.13 percent of the voting shares of, White River Bancshares Company, Fayetteville, Arkansas, and thereby indirectly acquire additional voting shares of Signature Bank, Fayetteville, Arkansas.

2. Home Bancshares, Inc., Conway, Arkansas; to acquire additional voting shares of, and also retain ownership of at least 20 percent of the voting shares of, White River Bancshares Company, Fayetteville, Arkansas, and thereby indirectly acquire additional voting shares of Signature Bank, Fayetteville, Arkansas.

Board of Governors of the Federal Reserve System, April 27, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–8347 Filed 5–1–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, May 7, 2007.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, April 27, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 07–2171 Filed 4–27–07; 5:00 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0000; 60-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Transferring existing collection 0920–0428.

Title of Information Collection: Supplements to the Application for Federal Assistance SF–424 (HHS 5161–1).

Form/OMB No.: 0990–0000.

Use: The Checklist, Program Narrative, and the Public Health System Impact Statement (third party notification) (PHSIS) are a part of the standard application for State and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding.

There may be some revisions made to one or more of the forms to allow the respondents easy web-based access. This should not affect the current burden. There is no cost to the respondents other than their time. HHS is transferring the clearance of the 5161–1 supplements to the SF–424 from CDC to HHS. HHS is requesting a three-year clearance. The request for renewal of this form was originally made in the 60-day FRN under OMB number 0920–0428.

Frequency: Once.

Affected Public: Not-for-profit institutions and State, Local, or Tribal Government.

Annual Number of Respondents: 7,457.

Total Annual Responses: 7,457.

Average Burden per Response: 5.725 hours.

Total Annual Hours: 42,691.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Resources and Technology, Office of Resources Management, Attention: Sherrette Funn-Coleman (0990–NEW), Room 537–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: April 20, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–8323 Filed 5–1–07; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0243; 30-day notice]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension.

Title of Information Collection: OCR Pre-grant Data Request Form.

Form/OMB No.: OS–0990–0243.

Use: The form is designed to collect data from health care providers who have requested certification to participate in the Medicare program. This civil rights compliance determination is an essential component of HHS' decision to grant or deny certification and must be made prior to the Department's final notification of its decision to the provider.

Frequency: Recordkeeping single time.

Affected Public: Business or other for-profit.

Annual Number of Respondents: 3,500.

Total Annual Responses: 3,500.

Average Burden per Response: 15 hours.

Total Annual Hours: 52,500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB 0990–0243), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 20, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–8324 Filed 5–1–07; 8:45 am]

BILLING CODE 4153–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Preparedness and Response; HHS Public Health Emergency Medical Countermeasures Enterprise Implementation Plan for Chemical, Biological, Radiological, and Nuclear Threats

AGENCY: Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services (HHS) published a document in the **Federal Register** of April 23, 2007, concerning the HHS Public Health Emergency Medical countermeasures Enterprise Implementation Plan for Chemical, Biological, Radiological and Nuclear (CBRN) Threats. The document should have provided additional information regarding a public comment period.

Correction

In the **Federal Register** of April 23, 2007, in FR Doc. 07–1983, on page 20117, in the third column, correct the **FOR FURTHER INFORMATION CONTACT** section and insert the following caption to read as follows:

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS PLEASE CONTACT: Dr. Susan Coller, Policy Analyst, Office of Public Health Emergency Medical Countermeasures, Office of the Assistant Secretary for Preparedness and Response at 330 Independence Ave., SW., Room G640, Washington, DC 20201, by e-mail at *PHEMCSTRAT@HHS.GOV* or by phone 202–260–1200. Please submit comments on the *HHS PHEMCE Implementation Plan* on or before July 13, 2007. HHS will not respond to individual comments; however, comments received will be compiled and considered to inform HHS programs related to the research, development, acquisition, deployment and utilization of medical countermeasures for CBRN threats.

Dated: Apirl 26, 2007.

Brian Kamoie,

Acting Office Director, Office of Policy and Strategic Planning, Office of the Assistant Secretary for Preparedness and Response, Department of Health and Human Services.

[FR Doc. E7–8358 Filed 5–1–07; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: ANA Consultant and Evaluator Qualifications Form.

OMB No.: 0970–0265.

Description: The ANA Consultant and Evaluator Qualifications Form is used to collect information from prospective proposal reviewers in compliance with 42 USC Section 2991d–1. The form will allow the Commissioner of ANA to select qualified people to review grant applications for Social and Economic Development Strategies (SEDS), Native Language Preservation and Maintenance, Environmental Regulatory Enhancement, and Environmental Mitigation. The panel review process is a legislative mandate in the ANA grant funding process.

Respondents: Native Americans, Native Alaskans, Native Hawaiians and other Pacific Islanders.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ANA Consultant and Evaluator Qualifications Form	300	1	1	300.

Estimated Total Annual Burden Hours: 300.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 26, 2007.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 07–2137 Filed 5–1–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner, Administration on Children, Youth and Families, the following authority vested in me by the Secretary of Health and Human Services in memoranda dated August 20, 1991, Delegations of Authority for the Runaway and Homeless Youth Program, Drug Abuse Education and Prevention Programs Relating to Youth Gangs, and Runaways and Homeless Youth; August 20, 1991, Delegation of Authority for Family Violence Prevention and Services Program; August 20, 1991, Delegations of Authority for Social Security Act Programs; June 9, 2004, Delegation of Authority for the Abstinence Education Program under Title V, section 510 of

the Social Security Act, as amended; and May 31, 2005, Delegation of Authority for the Abstinence Education Program, under Title V, Section 501(a)(2) of the Social Security Act, as amended.

(a) Authorities Delegated

1. Authority to administer the Runaway and Homeless Youth Program under the Runaway and Homeless Youth Act, 42 U.S.C. 5701, *et seq.*, and as amended, now and hereafter.

2. Authority to administer the Drug Abuse Education and Prevention Program Relating to Youth Gangs under Sections 3501–3505 of the Anti-Drug Abuse Act of 1988, 42 U.S.C. 11801–11805, and as amended, now and hereafter.

3. Authority to administer the Drug Abuse Education and Prevention Program Relating to Runaways and Homeless Youth under Sections 3511–3515 of the Anti-Drug Abuse Act of 1988, 42 U.S.C. 11821–11825, and as amended, now and hereafter.

4. Authority to administer provisions of the Family Violence Prevention and Services Act, 42 U.S.C. 10401, *et seq.*, and as amended, now and hereafter.

5. Authority to administer the provisions of section 439 of the Social Security Act, 42 U.S.C. 629i, concerning Grants for Programs for Mentoring Children of Prisoners, and as amended, now and hereafter.

6. Authority to administer the Abstinence Education Program under section 510 of the Social Security Act, 42 U.S.C. 710, and as amended, now and hereafter.

7. Authority to continue the administration of grants and contracts initially awarded in Fiscal Years 2002, 2003 and 2004 under the Special Projects of Regional and National Significance (SPRANS) Community-based Abstinence Education Program, pursuant to Title V, Section 501(a)(2) of the Social Security Act, as amended. The SPRANS Community-based Abstinence Education Program includes Community-based Abstinence Education grants, Abstinence Education Special Congressional Initiative Project grants, and the Abstinence Education Technical Assistance contract with the National Abstinence Clearinghouse. This delegation permits the Commissioner to administer the Fiscal Years 2002, 2003 and 2004 SPRANS abstinence education grants under the terms and conditions of the initial awards, thereby allowing the continuation of the existing grants consistent with recent appropriations enactments (Pub. L. 108–447).

(b) Limitations

1. These delegations shall be exercised under the Department's existing policies on delegations and regulations.

2. This delegation excludes the authority to submit reports to Congress and shall be exercised under financial and administrative requirements applicable to all Administration for Children and Families' authorities.

3. The approval or disapproval of grant applications and the making of grant awards requires concurrence of the appropriate Grants Officer. The approval or disapproval of contract proposals and awards is subject to the requirements of the Federal Acquisition Regulations and requires the concurrence of the Contracting Officer.

4. This delegation of authority does not include the authority to sign and issue notices of grant awards.

5. This authority does not include the authority to appoint Action Officials for Audit Resolution.

6. This delegation of authority does not include the authority to appoint Central Office or Regional Office Grant Officers for the administration of Family and Youth Services programs.

7. This delegation of authority does not include the authority to administer the Demonstration Grants for Community Initiatives, 42 U.S.C. 10418, under the Family Violence Prevention and Services Act.

8. Responsibilities under the Family Violence Prevention and Services Act are to be carried out in accordance with the requirements of Section 307, 42 U.S.C. 10406. This delegation of authority does not include enforcement authority under Section 307.

9. Any employee of the Department of Health and Human Services who is appointed to carry out one or more provisions of the Family Violence Prevention and Services Act shall, prior to such appointment, have had expertise in the field of family violence prevention and services.

10. Any redelegation shall be in writing and prompt notification must be provided to all affected managers, supervisors and other personnel and requires the concurrence of the Deputy Assistant Secretary for Administration.

(c) Effect on Existing Delegations

This delegation supersedes all previous delegations of authority involving the authorities delegated herein.

(d) Effective Date

This delegation is effective upon the date of signature.

I hereby affirm and ratify any actions taken by the Commissioner, Administration on Children, Youth and Families, which involved the exercise of the authorities delegated herein prior to the effective date of this delegation.

Dated: April 19, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E7–8321 Filed 5–1–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF), as follows: Chapter KB, the Administration on Children, Youth and Families (ACYF), as last amended May 23, 2006, 71 FR 29649, and October 6, 2006, 71 FR 59117. This notice reflects realignment of the Family Violence Prevention and Services Program from the Division of State Assistance, Office of Community Services, to the Family and Youth Services Bureau, ACYF. This notice also reflects the reassignment of certain Abstinence Education activities from the Maternal and Child Health Bureau, Health Resources Services Administration (HRSA), to the Family and Youth Services Bureau, ACYF. In addition, this notice establishes three divisions under the Family and Youth Services Bureau. Chapter KB is amended as follows:

Chapter KB, Administration on Children, Youth and Families

A. Delete the last sentence of KB.00 Mission and replace the last sentence with the following:

It administers Child Welfare Services training and Child Welfare Services research and demonstration programs authorized by title IV–B of the Social Security Act; administers programs under the Runaway and Homeless Youth Act; administers abstinence education grants under section 510 of the Social Security Act and other abstinence education programs; carries out provisions of the Family Violence Prevention and Services Act, administers the program for mentoring children of prisoners under section 439

of the Social Security Act; and manages initiatives to involve the private and voluntary sectors in the areas of children, youth and families.

B. Delete KB.10 Organization in its entirety and replace with the following:

KB.10 Organization. The Administration on Children, Youth and Families is headed by a Commissioner, who reports directly to the Assistant Secretary for Children and Families and consists of:

<bullet≤ Office of the Commissioner (KBA)
<bullet≤ Office of Management Services (KBA1)
<bullet≤ Program Operations Division (KBC1)
<bullet≤ Program Support Division (KBC2)
<bullet≤ Program Management Division (KBC3)
<bullet≤ Children's Bureau (KBD)
<bullet≤ Children's Bureau Regional Units (KBDDI–X)
<bullet≤ Office of Child Abuse and Neglect (KBD1)
<bullet≤ Division of Policy (KBD2)
<bullet≤ Division of Program Implementation (KBD3)
<bullet≤ Division of Data, Research and Innovation (KBD4)
<bullet≤ Division of Child Welfare Capacity Building (KBD5)
<bullet≤ Division of State Systems (KBD6)
<bullet≤ Family and Youth Services Bureau (KBE)
<bullet≤ Division of Youth Services (KBE1)
<bullet≤ Division of Family Violence Prevention (KBE2)
<bullet≤ Division of Abstinence Programs (KBE3)
<bullet≤ Immediate Office/ Administration (KBG1)
<bullet≤ Program Operations Division (KBG2)
<bullet≤ Policy Division (KBG3)
<bullet≤ Technical Assistance Division (KBG4)

C. Delete KB.20 Functions, Paragraph E, in its entirety and replace with the following: KB.20 Functions. E. The Family and Youth Services Bureau is headed by an Associate Commissioner who recommends policy direction and programs to address issues involving youth, family, abstinence education, mentoring children of prisoners, and domestic violence issues to the Commissioner, ACYF. The Associate Commissioner has a Deputy Associate Commissioner who acts as his alter ego and is responsible for the day-to-day direction of three divisions. The Office of the Associate Commissioner also has a Research, Data and Evaluation Team and a Regional Operations Team. The Bureau assesses policies, legislation and programs that affect runaway and homeless youth, families, mentoring children of prisoners, domestic violence and abstinence education. It recommends budgetary and legislative proposals and subject areas for research and demonstration activities; coordinates efforts with and provides expert advice to departmental and other federal agencies on youth issues and programs including runaway and homeless youth and youth at risk of involvement with gangs, violence and drugs and other youth in at-risk situations; and develops program initiatives to address abstinence education and the needs of runaway and homeless youth, families, children of prisoners and domestic violence victims and their dependents. The Bureau represents HHS on various councils, workgroups and committees and provides leadership and coordination to other HHS programs and agencies. The Bureau has the following divisions:

1. The Division of Youth Services promotes a youth development approach to program services so that Bureau programs and activities are planned and designed with an emphasis on meeting the developmental needs of young people and their families, including runaway and homeless youth, youth at risk of involvement with gangs, violence and drugs and other youth in at-risk situations. The Division's administration of the runaway and homeless youth program—which incorporates the basic center, street outreach and transitional living programs—includes development and implementation of policy, guidelines and regulations concerning the funding and management of service projects for youth under the Runaway and Homeless Youth Act. Administration of the program for mentoring children of prisoners authorized under section 439 of the Social Security Act also includes development of policy, guidelines and regulations regarding the funding and management of grant projects and other activities.

The Division oversees the receipt and review of applications for grants that ultimately provide services to youth and families and monitors the management of these grants in the ACF Regional Offices. In addition, the Division designs, develops, funds and monitors support activities related to these programs, including, but not limited to, the provision of technical assistance, a monitoring system, a data collection system, a family and youth clearinghouse and a national communications system/hotline.

The Division determines the conceptual and policy framework to address issues facing families and adolescents. It identities problems, defines critical issues for investigation and makes recommendations regarding subject areas for research, demonstration and evaluation activities. Based on the outcomes of these activities, the Division disseminates information through conferences, forums and written materials; provides assistance to service providers and state and local governments in planning, developing, implementing and evaluating programs affecting family and youth; and recommends plans and programs to increase public awareness and understanding about activities affecting vulnerable families and youth.

2. The Division of Family Violence Prevention promotes public awareness about domestic violence and its impact. The Division's programs support the prevention of family violence; provide immediate shelter and related assistance to victims of family violence and their dependents; provide for research into the most effective prevention, identification and treatment of family violence; and provide training and technical assistance to family violence personnel in states, tribes, local public agencies (including law enforcement agencies, courts, social service agencies and health care professionals) and non-profit organizations. The Division is responsible for developing, updating and implementing program regulations and policies. The Division oversees the receipt and review of applications for grants and certain grantee activities. It also provides guidance, review, support and assistance to states and grantees on HHS policies, regulations, procedures and systems necessary to ensure efficient program operation at the state, territorial and tribal levels. In addition, the Division coordinates all programs within the Department of Health and Human Services, and seeks to coordinate all other Federal programs, which involve the prevention of incidents of family violence and the provision of assistance for victims and potential victims of family violence and their dependents.

3. The Division of Abstinence Programs manages the Abstinence Education State Grant Program, which provides formula grants to states and other jurisdictions for the purpose of providing abstinence education as defined by Section 510 of the Social Security Act. The Division also manages the Community-Based Abstinence Education Grant Program, which makes competitive grants to public and private entities to plan and implement strategies for providing abstinence education to adolescents. The Division develops the conceptual framework to address abstinence education issues, monitors and assesses the programs and ensures the provision of technical assistance.

Dated: April 19, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E7–8318 Filed 5–1–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have delegated to the Principal Deputy Assistant Secretary, Deputy Assistant Secretaries, Program Directors, Program Commissioners, Deputy Director/Commissioner, Office of Child Support Enforcement, and Staff Office Directors the following authority vested in me by the Secretary of Health and Human Services in the memorandum dated August 20, 1991, Delegations of Authority for Social Security Act Programs; 31 U.S.C. 1535; and HHS General Administrative Manual, Chapter 8–77.

(a) Authorities Delegated.

1. Authority to administer approved cooperative research experimental, pilot or demonstration projects under the provisions of sections 1110 and 1115 of the Social Security Act.

2. Authority to approve interagency agreements to procure, provide or exchange services, supplies or equipment.

(b) Limitations.

1. The authority listed in ι1 above shall be exercised under the condition that projects may be administered by the Office of Planning, Research and Evaluation (OPRE), by the program/staff office or jointly by OPRE with the program/staff office.

2. Where all or any part of an experimental, pilot, research or demonstration project is wholly financed with Federal funds made available under sections 455(e), 1110 or 1115 of the Social Security Act, without any State, local or other non-Federal financial participation, that project must be approved by the Secretary of Health and Human Services.

3. This delegation of authority does not include the authority to approve/disapprove projects under sections 1110 or 1115 of the Social Security Act or approve/disapprove waivers of State Plan requirements or costs that would not otherwise be included as expenditures under the provisions of section 1115(a)(1) and (2) of the Social Security Act.

4. The authority to approve interagency agreements to procure, provide, or exchange services, supplies, or equipment requires the concurrence of the ACF Chief Financial Officer if it exceeds $250,000 (including amendments) within a fiscal year or if it requires the signature of the Assistant Secretary, ACF, or the Secretary of HHS.

(c) Effect on Existing Delegations.

As related to this delegation of authority, this delegation supersedes all previous delegations of authority involving the administration of the cross-program authorities delegated herein.

(d) Effective Date.

This delegation is effective upon the date of signature.

I hereby ratify and affirm any actions taken by the Principal Deputy Assistant Secretary, Deputy Assistant Secretaries, Program Directors, Program Commissioners, Deputy Director/Commissioner, Office of Child Support Enforcement, and Staff Office Directors, which involved the exercise of the authority delegated herein prior to the effective date of this delegation.

Dated: April 19, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E7–8319 Filed 5–1–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0135]

Guidance for Industry on Testing of Glycerin for Diethylene Glycol; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Testing of Glycerin for Diethylene Glycol.'' This guidance provides recommendations on testing that will help pharmaceutical manufacturers, repackers, and other suppliers of glycerin, and pharmacists who engage in drug compounding, avoid the use of glycerin that is contaminated with diethylene glycol (DEG) and prevent incidents of DEG poisoning.

DATES: Submit written or electronic comments on the guidance by July 31, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Monica Caphart, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–9047.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Testing of Glycerin for Diethylene Glycol.'' This guidance explains that the agency recommends that certain analytical testing procedures be performed on glycerin to avoid the use of DEG-contaminated product. Specifically, the agency is recommending that all lots of glycerin received by a pharmaceutical manufacturing facility undergo identity testing that includes a test for DEG content. DEG contamination of glycerin can be detected by using specific analytical test procedures described in the United States Pharmacopeia monograph for glycerin, which quantifies the amount of DEG present at a detection level of 0.1 percent, as recommended by the interagency Diethylene Glycol Contamination Prevention Workshop of 1997. Repackers, pharmacy compounders, and others who distribute and prepare glycerin for use in drug products should test glycerin that is used, sold for use, or intended for use in drug products. This recommendation also applies to bulk or repackaged glycerin intended as an excipient or other component for a drug. In addition, pharmacies that purchase glycerin for use in compounding drug products should either test the glycerin or ensure that such testing was properly done by a reliable supplier.

As explained in detail in the guidance, there have been repeated instances of DEG poisoning that have led to the development of this guidance. Between 1990 and 1998, DEG poisoning has been reported in Haiti, Argentina, Bangladesh, India, and Nigeria. More recently, in October 2006, there were cases of illness and death in Panama due to DEG poisoning.

The cases involving DEG contamination reveal the following similarities:

<bullet≤ The pharmaceutical manufacturers did not perform full identity testing on the glycerin raw material, including tests to quantify the amount of DEG present and to verify the purity of the glycerin received.

<bullet≤ The pharmaceutical manufacturers of the contaminated products relied on the certificate of analysis (COA) provided by the supplier.

<bullet≤ The origin of the product was not easily apparent from the COA.

FDA has no reason to believe that the U.S. supply of glycerin is affected at the present time. However, because of the serious nature of this potentially fatal problem and the global nature of the pharmaceutical supply chain, FDA is emphasizing in this guidance the importance of testing glycerin for DEG.

We are issuing this level 1 guidance for immediate implementation, consistent with FDA's good guidance practices regulation (21 CFR 10.115). The agency is not seeking comment prior to implementing this guidance because of the potential for a serious public health impact if DEG-contaminated glycerin were to enter the domestic market. The guidance represents the agency's current thinking on this issue. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: April 16, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–8389 Filed 5–1–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the OMB for review under the Paperwork Reduction Act of 1995:

Proposed Project: Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193)—Extension for 2007 UDS Data Collection

The Uniform Data System (UDS) contains the annual reporting requirements for the cluster of primary care grantees funded by HRSA. The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and other grantees under Section 330. The authorizing statute is Section 330 of the Public Health Service Act, as amended.

HRSA collects data in the UDS which is used to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, HRSA requires a core set of data collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

Estimates of annualized reporting burden are as follows:

Type of report	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Universal Report	1,055	1	1,055	28	29,540
Grant Report	145	1	145	18	2,610
Total	1,055		1,100		32,150

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 25, 2007.

Caroline Lewis,

Acting Associate Administrator for Administration and Financial Management.

[FR Doc. E7–8379 Filed 5–1–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Diagnosing and Treating Cancer Using Beta-Catenin Splice Variants

Description of Technology: This application discloses and claims inventions which may be used alone or together. One group of inventions relates to early detection diagnostic, prognostic and patient monitoring methods (''Diagnostic Methods''). The other group of inventions relates to methods of treatment. Both groups of inventions have particular application with respect to esophageal squamous cell cancers (ESCC) or other types of adenocarcinomas and squamous cell carcinomas.

The Diagnostic Methods are useful in evaluating the status of preneoplastic lesions as well as tumor tissue. Because of this, the methods can be used to track the progression or regression of disease in many types of cell samples from normal to dysplasia to cancer.

The Diagnostic Methods involve measuring the level of one or more pairs of transcripts or the protein products of these pairs of transcripts or the cellular localization of the transcripts or proteins. The primary transcripts or protein products useful in this method are those of the beta-Catenin gene (CTNNB1). In particular, the levels of the 16A and 16B CTNNB1 transcripts or protein products are of importance in carrying out the methods of this patent application. Other gene transcripts or protein products that may be used in conjunction with CTNNB1 16A and 16B to provide additional information are WAF1 (p21) and cMYC.

The treatment methods include employing small interfering RNA molecules (siRNAs) as a means to alter the expression of one or more of these particular CTNNB1 transcripts. More specifically, preferred siRNA molecules can be used to alter the expression of the CTNNB1 transcripts 16A and/or 16B. These siRNA molecules may be single-stranded (ss) or double-stranded (ds) and may be delivered using a construct capable of producing the siRNA molecule upon delivery to the target cell.

Applications: Diagnostic or prognostic methods for squamous cell cancers and adenocarcinomas; Monitoring therapeutic response during and after patient treatment; Development of cancer treatments; Basic research to further elucidate the role of beta catenin in signal transduction pathways and carcinogenesis.

Development Stage: The use of beta catenin transcripts to provide prognostic or diagnostic information remains the subject of research but early patient data is found in the article in Genes Chromosomes & Cancer listed below. Work related to the use of siRNA as a treatment strategy remains in its early stages of research and has not yet progressed to clinical trials.

Inventors: Mark J. Roth and Konrad Huppi (NCI).

Publications:

1. The patent application has been published as WO 2006/086772 A2 on 17 August 2006.
2. MJ Roth *et al.* beta-Catenin splice variants and downstream targets as markers for neoplastic progression of esophageal cancer. Genes Chromosomes Cancer. 2005 Dec;44(4):423–428.
3. SE Martin *et al.* Multiplexing siRNAs to compress RNAi-based screen size in human cells. Nucleic Acids Res. 2007 Mar 28; E published ahead of print, doi:10.1093/nar/gkm141.
4. A Thiele *et al.* AU-rich elements and alternative splicing in the beta-Catenin 3' UTR can influence the human beta-Catenin mRNA stability. Exp Cell Res. 2006 Jul;312:2367–2378.

Patent Status:

PCT/US2006/05032 filed 10 Feb 2006 and published as WO 2006/086772 on 17 Aug 2006, currently pending, entitled ''Method of Diagnosing and Treating Cancer Using Beta Catenin Splice Variants'' (HHS Reference No. E–018–2005/2–PCT–01);

U.S. Provisional Application No. 60/667,084 filed 30 Mar 2005, now abandoned (HHS Reference No. E–018–2005/1–US–01);

U.S. Provisional Application No. 60/652,154 filed 10 Feb 2005, now abandoned (HHS Reference No. E–018–2005/0–US–01).

Biological Materials Availability: Biological materials related to this technology are available and include those referred to in the following publications as well as a series of recently established aptamers capable of specific binding to the CTNNB1 protein.

1. MJ Roth *et al.* Cytologic detection of esophageal squamous cell carcinoma and precursor lesions using balloon and sponge samplers in asymptomatic adults in Linxian, China. Cancer. 1997 Dec 1;80(11):2047–2059.
2. Q–J Pan *et al.* Cytologic detection of esophageal squamous cell carcinoma and its precursor lesions using balloon samplers and liquid-based cytology in asymptomatic adults in Linxian, China. ACTA Cytologica (In Press).
3. MJ Roth *et al.* A study of beta-catenin splice variants and associated downstream targets as markers for neoplastic progression of squamous cell carcinoma of the esophagus. Genes Chromosomes Cancer. 2005 Dec;44(4):423–428.
4. PJ Limburg *et al.* Randomized, placebo-controlled esphogeal squamous cell cancer chemoprevention trial of selenomethionine and celecoxib. Gastroenterology. 2005 Sept;129(3):863–873.

Licensing Availability: This application is available for license on a non-exclusive or exclusive basis.

Licensing Contact: Susan S. Rucker, Esq.; 301/435–4478; *ruckersu@mail.nih.gov*

Collaborative Research Opportunity: The National Cancer Institute, Division of Cancer Epidemiology and Genetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a method of diagnosing and treating cancer using beta-Catenin splice variants. Please contact John D. Hewes, PhD at 301–435–3121 or *hewesj@mail.nih.gov* for more information. 8356

Dated: April 25, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–8356 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of 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 a meeting of the

Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 21–22, 2007.

Closed: May 21, 2007, 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Open: May 22, 2007, 8:30 a.m. to 5 p.m.

Agenda: Fogarty International Center will present an early draft of the Strategic Plan.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Jean L. Flagg-Newton, Ph.D., Special Assistant to the Director, FIC, Fogarty International Center, National Institutes of Health, 9000 Rockville Pike, Building 31, Room B2C29, Bethesda, MD 20892, (301) 496–2968, *flaggnej@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: April 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2144 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of 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 a meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of 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 Cancer Advisory Board.

Date: June 14, 2007, 2 p.m. to 4:30 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette, S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Date: June 14, 2007, 4:30 p.m. to 5:30 p.m.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette, S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Date: June 15, 2007, 8 a.m. to 12 p.m.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8001, Bethesda, MD 20892–8327, (301) 496–5147.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(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: April 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2146 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.

Date: June 5, 2007.

Time: To review and evaluate grant applications.

Place: Hilton Executive Meeting Center/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: John R. Glowa, PhD, Scientific Review Administrator, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; CTSA Contract Proposal NHLBI RR–07–09.

Date: June 6–7, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Doubletree Bethesda, (formerly Holiday Inn Select Bethesda), 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Linda C. Duffy, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Room 1082, Bethesda, MD 20892, (301) 435–0810, *duffyl@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; New England Primate Research Center (NEPRC) Site Visit.

Date: June 26–28, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Framingham Hotel, 1657 Worcester Road, Framingham, MA 01701.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Dem. Plaza, Room 1076, Bethesda, MD 20892, (301) 435–0814, *lambert@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; C.O.B.R.E. SEP 1.

Date: June 29, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mamta Gautam-Basak, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 1 Dem. Plaza, Rm. 1066, Bethesda, MD 20892, (301) 435–0965, *GautamM@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: April 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2148 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEATLH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of 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 of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Environmental Health Sciences Council.

Date: May 30–31, 2007.

Open: May 30, 2007, 8:30 a.m. to 12:30 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: May 30, 2007, 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Ins. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Open: May 31, 2007, 8:30 a.m. to 11:45 a.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Dennis R. Lang, Phd, Acting Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233/EC–3431, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–7729, *lang4@niehs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contract Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2142 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences, 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Development of Transgenic, Conventional and Conditional Knock-Out Mouse Lines.

Date: June 14, 2007.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Room 122, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: April 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2143 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and 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 a meeting of the National Advisory Child Health and Human Development Council.

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 intramural programs and projects and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the intramural programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council; NACHHD Subcommittee on Planning and Policy.

Date: May 11, 2007.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate the Division of Intramural Research site visit reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 2A48, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Susanne Strickland, Acting Deputy Director for Science Policy, Analysis & Communication, NICHD/NIH/DHHS, 31 Center Drive, Suite 2A–18, Bethesda, MD 20892, 301–435–3440.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the Executive Secretary's need for confirmation from subcommittee members on their availability to participate in this meeting.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posed when available.

(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: April 24, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2145 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; IAR Review of Loan Repayment Applications.

Date: May 24, 2007.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, 45 Center Drive, Room 3AN–18, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Margaret Weidman, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2147 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Institute of Dental & Craniofacial Research Special Emphasis Panel; 07–48, Review R25s.

Date: June 5, 2007.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, 45 Center Dr, 4An 32B, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–4827, *kims@email.nidr.nih.gov.*

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel; 07–51, Review R21s PAR–06–556.

Date: June 6, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

Name of Committee: National Institute of Dental & Craniofacial Research Special Emphasis Panel; 07–52, Review R21s.

Date: June 11, 2007.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–32F, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006, *lynn.king@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2149 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Diseases Core Centers.

Date: June 15, 2007.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2150 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of 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 Allergy and Infectious Diseases Special Emphasis Panel; Hematopoietic Cell Transportation and Immune Tolerance.

Date: May 29, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3136, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Mercy R. Prabhudas, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp547nh@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: April 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–2151 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Public Teleconference Regarding Licensing and Collaborative Research Opportunities for: Use of CYP1B1*3 Genotyping To Predict Overall Survival in Patients With Prostate Cancer Prior to Treatment With Docetaxel; Dr. William D. Figg et al. (NCI)

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

Technology Summary

The technology is an exciting discovery in the field of prostate, breast and lung cancer genetic markers having profound clinical applications in defining the optimal chemotherapeutic

treatment schedule for each individual patient. This genetic marker (CYP1B1*3) can be potentially used as a prognostic tool to predict survival rate in patients prior to treatment, and to asses their propensity to respond to docetaxel treatment when being treated not only for androgen-independent prostate cancer (AIPC) but also for breast cancer, lung cancer, stomach cancer, head and neck cancer.

Description of Technology or Products

Prostate cancer develops most frequently in men over fifty. Prostate cancer is the most common type of cancer in the United States, and it is responsible for more male deaths than any other cancer, except lung cancer. The cancerous cells may spread (metastasize) from the prostate to other parts of the body, especially the bones and lymph nodes.

Prostate cancer is most often discovered by physical examination like digital rectal examination or by screening PSA level in blood. There is some current concern about the accuracy of the PSA test and its usefulness. PSA levels can change due to factors other than cancer. Two common causes of high PSA levels are enlargement of the prostate (benign prostatic hyperplasia or BPH) and infection in the prostate (prostatitis). Screening for prostate cancer using PSA is controversial because it is not clear if the benefits of screening outweigh the risks of follow-up diagnostic tests and cancer treatments. However, prostate cancer is typically confirmed by biopsy. Further tests, such as X-rays and bone scans, may be performed to determine whether the cancer has spread.

Lung cancer is the most lethal of all cancers worldwide, responsible for 1.2 million deaths annually. Non-small-cell lung cancer (NSCLC) is the most common lung cancer, accounting for about 80% of all lung cancers. Treatment for lung cancer involves surgical removal of tumor, chemotherapy, or radiation therapy, combinations of these methods. The treatment course depends on the localization and the tumor metastasis as well as the overall health status of the patient. Docetaxel was the first drug specifically approved by the FDA for the second-line treatment of NSCLS.

Breast cancer is the second most fatal form of cancer in females, affecting approximately one out of thirty-nine in the Western world after lung cancer. The mainstay of breast cancer treatment is surgery when the tumor is localized, with possible adjuvant hormonal therapy, chemotherapy, and/or radiotherapy. Docetaxel is most commonly recommended for adjuvant treatment (given with doxorubicin and cyclophosphamide) as it has been shown to be more successful in advanced breast cancer patients than paclitaxel, another drug approved by FDA to treat advanced breast cancer.

Prostate cancer can be treated by suppressing or blocking androgens with surgery, radiation therapy, hormone therapy, occasionally chemotherapy, high intensity focused ultrasound (HIFU), cryosurgery, or a combination of these approaches. When prostate cells, both healthy and cancerous, are deprived of androgens, they no longer proliferate and eventually die. Surgical removal of the prostate, or prostatectomy, is a common treatment either for early stage prostate cancer or for cancer which has failed to respond to radiation therapy. Unfortunately, prostate cancer usually returns within about 18 months after anti-androgen treatments. In such cases, the condition is referred to as androgen-independent (advanced and metastasized cancer) prostate cancer (AIPC), and the tumors are not responsive to anti-androgen therapy. Currently, physicians recommend chemotherapy for advanced metastatic prostate cancers that have failed to respond to other treatments. However, treatment for AIPC is rapidly evolving.

Chemotherapy with mitoxantrone and prednisone offers a palliative benefit but no survival advantage. Long-term therapy with this regimen is not feasible due to cumulative dose-related cardiotoxicity. Single-agent docetaxel treatment has shown to be very effective in palliating metastatic prostate cancer and is not associated with cumulative dose-related toxicities. Currently, Docetaxel is one of the most frequently prescribed anti-cancer agents for the treatment of certain forms of breast cancer, lung cancer, stomach cancer, head and neck cancer including AIPC. Despite the relative success of docetaxel in treating AIPC, high variability in clinical response has been observed. Due to variety of available treatment options, choosing the most appropriate treatment can be daunting. Since prostate cancer is a disease of older men who may be frail due to other health issues, many patients die of other causes before the prostate cancer can spread or cause symptoms. Whether or not to treat metastasized prostate cancer with curative intent is a patient's trade off between the expected beneficial and harmful effects in terms of survival time and quality of life. A number of important variables in each patient's history and previous pattern of response must be addressed before choosing effective chemotherapy. Predicting survival rate in patients prior to treatment to asses their propensity to response to docetaxel treatment is one of the most important variables.

Cytochrome P450 (CYP1B1), up-regulated in tumor cells, is involved in the metabolism of steroid hormones, metabolizing a variety of drugs, and potentially important in prostate tumor development and progression. Several studies have evaluated the relationship between CYP1B1 polymorphisms and risk of various cancers including two common single nucleotide polymorphisms (SNP). These include colorectal, lung, breast, ovarian, and prostate cancers. The difference between wild type and variant type CYP1B1*3 is a single amino acid change at position 432 of the expressed protein caused by a single nucleotide change. Recent studies have shown that this polymorphism is associated with increased risk of advanced prostate cancer and altered drug metabolism. It is known that docetaxel competitively inhibits CYP1B1 mediated processes. The responsiveness and overall survival of patients with AIPC that are treated with docetaxel, can be determined by CYP1B1*3 genotype. In a study of 25 patients after docetaxel treatment, those with AIPC that are homozygous or heterozygous for the wild type CYP1B1*3 exhibited increased (2x) mean survival time compared to homozygous variant. Additionally, there was a similar difference in overall survival observed in 20 men treated with combination estramustine, thalidomide, and docetaxel. Others have found that the CYP1B1*3 allele was the only SNP out of 8 studied variants within 6 genes of known importance in paclitaxel disposition to be associated with lower progression free survival following paclitaxel therapy in 93 patients with breast cancer. Knowledge of an individual's (multiple) phenotypic profile will allow physicians to choose the safest and most effective therapeutic agent.

This technology has potential utility as a prognostic tool to identify individuals who may benefit from therapy with docetaxel (i.e. patients that are homozygous for the wild type CYP1B1*3 or heterozygous).

Potential Market Size

Prostate cancer is the most common cancer in America, affecting 1 in 6 men. In 2007, more than 218,000 men will be diagnosed with prostate cancer, and more than 27,000 men will die from the disease. In addition to the U.S., approximately 200,000 men in the EU and 32,000 men in UK are diagnosed

with prostate cancer each year and the disease accounts for nearly one quarter of all new cancer diagnoses of all new male cancer diagnoses. Worldwide, about 395,000 men are diagnosed with prostate cancer each year and the incidence is on the increase. The total direct medical cost of prostate cancer in the U.S. is $ 5 billion per year. It is estimated that prostate cancer therapeutics in the U.S., Europe and Japan will cost $ 7.3 billion in 2011.

The global annual cancer market is estimated at $35 billion with breast, lung and prostate cancers being the most significant contributors. Incidences of lung, breast and stomach cancers were found to be 351,344, 220,000, and 25,000 respectively in the U.S. The current market size of drugs used for the treatment of lung cancer is $ 25 billion, while that of breast cancer is $3.3 billion.

Current Competitive Product(s)

Currently there are no genetic markers available to assess the responsiveness of an AIPC-patient to therapy before starting the treatment. Knowing CYP1B1*3 genetic status saves time and money of patients and prevents ineffective treatments.

Value Proposition

The FDA approved dose and schedule for docetaxel in combination with prednisone in the treatment of androgen-independent (hormone-refractory) metastatic prostate cancer is 75 mg/m^2 IV infusion for 1 hour every 3 weeks with 5 mg prednisone continuously and average cost per cycle of therapy is $ 4,298. The use of docetaxel has been recently shown to prolong survival and improve rates of response and quality of life, but it is unclear which patient would benefit from treatment with this drug given that high variability in clinical response has been observed. A consequence of such variability is that a docetaxal treatment may be effective in one subject and ineffective or poorly tolerated in another subject. Thus, administration of such a drug to a subject in whom the drug would be ineffective would result in wasted cost and time during which the patient's condition may significantly worsen. Also, administration of a drug to subject in whom the drug would not be tolerated could result in a direct worsening of the patient's condition and could even result in death. This technology identifies the polymorphism of CYP1B1*3 gene which modulates the therapeutic response to docetaxel treatment. This genetic marker can be measured in DNA obtained from a blood sample to predict overall survival in patients with prostate cancer prior to treatment with docetaxel. Genetic markers with predictive power to assess inter-subject differences resulting in clinical outcome prior to docetaxel administration have profound clinical importance.

Intellectual Property Status

A PCT patent application was filed 09 September 2006.

Partnering Opportunity

Licensing opportunities are available. In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Licensing Contact: Mojdeh Bahar; (301) 435–2950; *baharm@mail.nih.gov.*

Collaborative Contact: John D. Hewes, Ph.D.; (301) 435–3121; *hewesj@mail.nih.gov.*

Next Step: Teleconference

There will be a teleconference where the principal investigator will explain this technology. Licensing and collaborative research opportunities will also be discussed. If you are interested in participating in this teleconference please call or email Mojdeh Bahar; (301) 435–2950; *baharm@mail.nih.gov.* OTT will then email you the date, time and number for the teleconference.

Dated: April 25, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–8355 Filed 5–1–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–N–14]

Notice of Proposed Information Collection: Comment Request; Section 202 Supportive Housing for the Elderly Application Submission Requirements

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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:* July 2, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410, or *Lillian—L—Deitzer@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting 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 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 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: Section 202 Supportive Housing for the Elderly Application Submission Requirement.

OMB Control Number, if applicable: 2502–0267.

Description of the need for the information and proposed use: The collection of this information is necessary to the Department to assist HUD in determining applicant eligibility and ability to develop housing for the elderly within statutory and program criteria. A thorough evaluation of an applicant's submission is necessary to protect the Government's financial interest.

Agency form numbers, if applicable: HUD–92015–CA, HUD–96010, HUD 92041, SF–424, SF–424–Supplemental, SF–LLL, HUD–2880, HUD–2990, HUD–2991, HUD–92042, HUD–96010, HUD

424B, HUD–27300, HUD–96011, & HUD–2994–A.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 12,001 the number of respondents is 300 generating approximately 300 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 30 minutes to 21.5 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 26, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E7–8327 Filed 5–1–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5121–15]

Notice of Submission of Proposed Information Collection to OMB; Application for Insurance of Advance of Mortgage Proceeds

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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.

DATES: *Comments Due Date:* June 1, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0097) and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20401 or *Lillian—Deitzer@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Richard Shearin, Appraiser, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Richard—R.—Shearin@hud.gov*; telephone (202) 402–2585. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. 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.

Title of Proposal: Application for Insurance of Advance of Mortgage Proceeds.

OMB Approval Number: 2502–0097.

Form Numbers: HUD–92403.

Description of the Need for the Information and Its Proposed Use: The application for Insurance of Advance of Mortgage Proceeds, is submitted by mortgagors to request the advance of mortgage proceeds to reimburse the mortgagor for funds expended or obligated for construction related items; and by mortgagees to request mortgage insurance for funds so advanced. HUD transmits the form as its certificate for mortgage insurance for funds it approves for advance.

Frequency of Submission: Quarterly.

I	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	33,600	16,800	....	0.2	....	3,360

Total Estimated Burden Hours: 3,360.

Status: Request for extension of an existing information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 26, 2007.

Frank L. Davis,

General Deputy Assistant Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. E7–8328 Filed 5–1–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Sporting Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Sporting Conservation Council (Council). This meeting is designed to review wildlife conservation endeavors that benefit recreational hunting and wildlife resources and that encourage partnerships among the public, the sporting conservation community, wildlife conservation groups, and State and Federal governments. This meeting is open to the public, and will include a session for the public to comment.

DATES: We will hold the meeting on May 23, from 8:30 a.m. to 4:30 p.m. and on May 24, from 8:30 a.m. to 4:30 p.m. From 1 p.m. to 2 p.m. on May 23, we will host a public comment session.

ADDRESSES: On May 23, the meeting will be held in Room 5160 at the Department of the Interior, 1849 C Street, NW., Washington, DC 20240. On May 24, the meeting will be held in Room 108–A at the Department of Agriculture, 12th and Jefferson Drive, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Phyllis T. Seitts, 9828 North 31st Avenue, Phoenix, Arizona 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 hold a meeting on the dates shown in the **DATES** section at the address shown in the **ADDRESSES** section. The meeting will include a session for the public to comment.

Dated: April 25, 2007.

Phyllis T. Seitts,

Designated Federal Officer, Sporting Conservation Council.

[FR Doc. E7–8370 Filed 5–1–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Final 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007–2012 and Final Environmental Impact Statement

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of proposed final program and final environmental impact statement (EIS)

SUMMARY: The MMS has issued a proposed final program for 2007–2012. This is the third and final proposal for a new OCS oil and gas leasing program, following the February 2006 draft proposed program and August 2006 proposed program. A final EIS prepared in accordance with section 102(2)(C) of the National Environmental Policy Act has been issued along with the proposed final program. The proposed final program schedules 21 sales in 8 OCS planning areas—8 sales in 4 Alaska planning areas, 12 sales in 3 Gulf of Mexico planning areas, and 1 sale in the Mid-Atlantic planning area. This includes 1 sale in the Eastern Gulf of Mexico as mandated by the Gulf of Mexico Energy Security Act of 2006 (P.L. 109–432, December 20, 2006). The proposed final program has been submitted to the President and Congress as required by section 18 of the OCS Lands Act. In accordance with section 18, the Secretary of the Interior may approve the new leasing program after a period of 60 days.

DATES: The new program is scheduled to go into effect on July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Proposed final program and final EIS documents and information can be obtained from the MMS internet webpage at *www.mms.gov*. The documents also can be obtained from the following MMS offices: Gulf of Mexico Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2519 or 1–800–200–GULF; Alaska Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503, telephone (907) 334–5200 or 1–800–764–2627; and MMS, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010–6064, telephone (805) 389–7533, (805) 389–7863 or 1–800–672–2627, in addition to the informational addresses below. The list of libraries where the Final EIS has been sent can also be found on the MMS 5-year program Web site at *http://www.mms.gov/5-year/*.

SUPPLEMENTARY INFORMATION: Questions concerning preparation of the proposed final program should be directed to: Renee Orr, Chief, Leasing Division, MS–4010, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817, telephone (703) 787–1215. Copies of the program document and related information also can be obtained from the Leasing Division.

Questions concerning the Final EIS should be directed to: James F. Bennett, Chief, Environmental Assessment Branch, MS–4042, Minerals Management Service, 381 Elden Street, Herndon, Virginia 20170–4817, telephone (703) 787–1660. Copies of the EIS and related information also can be obtained from the Environmental Assessment Branch.

Dated: April 11, 2007.

R.M. "Johnnie" Burton,

Director, Minerals Management Service.

[FR Doc. E7–8339 Filed 5–1–07; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Scientific Committee (SC); Announcement of Plenary Session

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Scientific Committee will meet at the Hilton New Orleans/St. Charles Avenue in New Orleans, Louisiana.

DATES: Tuesday, May 22, 2007, from 8 a.m. to 5:30 p.m.; Wednesday, May 23, 2007, from 8 a.m. to 5:30 p.m.; and Thursday, May 24, 2007, 8:30 a.m. to 12:30 p.m.

ADDRESS: Hilton New Orleans/St. Charles Avenue, 333 St. Charles Avenue, New Orleans, Louisiana 70130, telephone (504) 524–8890.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda may be requested from MMS by calling Ms. Carolyn Beamer at (703) 787–1211. Other inquiries concerning the OCS SC meeting should be addressed to Dr. James Kendall, Executive Secretary to the OCS SC, Minerals Management Service, 381 Elden Street, Mail Stop 4043, Herndon, Virginia 20170–4817 or by calling (703) 787–1656.

SUPPLEMENTARY INFORMATION: The OCS SC will provide advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of the MMS. The SC will review the relevance of the research and data being produced to meet MMS scientific information needs for decisionmaking and may recommend changes in scope, direction, and emphasis.

The Committee will meet in plenary session on Tuesday, May 22. The Deputy Associate Director will address the Committee on the general status of the MMS and its activities. There will be an update on OCS activities in the Gulf of Mexico OCS Region and briefings on MMS' Alternate Energy Program and the Louisiana State University Coastal Marine Institute program.

On Wednesday, May 23, the Committee will meet in discipline breakout sessions (i.e., biology/ecology, physical sciences, and social sciences) to review the specific research plans of the MMS regional offices for Fiscal Years 2007 and 2008.

On Thursday, May 24, the Committee will meet in plenary session for reports

of the individual discipline breakout sessions of the previous day and to continue with Committee business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, P.L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: April 26, 2007.

Chris C. Oynes,

Associate Director for Offshore Minerals Management.

[FR Doc. E7–8331 Filed 5–1–07; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–2104–025]

U.S.–Panama Trade Promotion Agreement: Potential Economy-Wide and Selected Sectoral Effects

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request from the United States Trade Representative (USTR) on March 30, 2007, the Commission instituted investigation No. TA–2104–025, U.S.–Panama Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects, under § 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)), for the purpose of assessing the likely impact of the U.S.–Panama Trade Promotion Agreement (TPA) on the U.S. economy as a whole and on specific industry sectors and the interests of U.S. consumers.

DATES: March 30, 2007: Receipt of request.

May 7, 2007: Deadline for receipt of requests to appear at hearing.

May 10, 2007: Deadline for filing pre-hearing briefs and statements.

May 16, 2007, 9:30 a.m.: Public hearing.

May 23, 2007: Deadline for filing post-hearing briefs and statements and all other written submissions.

September 12, 2007: Anticipated date for transmitting report to USTR and the Congress.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Project Leader Jennifer Baumert, Office of Industries (202–205–3450; *jennifer.baumert@usitc.gov*) or Deputy Project Leader Alan Treat, Office of Industries (202–205–3426; *alan.treat@usitc.gov*]. For information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091; *william.gearhart@usitc.gov*. The media should contact Margaret O'Laughlin, Office of External Relations at 202–205–1819 or *margaret.olaughlin@usitc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: As requested by the USTR, the Commission will prepare a report as specified in § 2104(f)(2)–(3) of the Trade Act of 2002 assessing the likely impact of the U.S.–Panama Trade Promotion Agreement on the U.S. economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports; aggregate employment and employment opportunities; the production, employment, and competitive position of industries likely to be significantly affected by the agreement; and the interests of U.S. consumers.

In preparing its assessment, the Commission will review available economic assessments regarding the agreement, including literature concerning any substantially equivalent proposed agreement, and will provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. On March 30, 2007, the President notified the Congress of his intent to enter into a TPA with Panama. The USTR requested that the Commission provide its report as soon as possible.

Public Hearing: A public hearing in connection with the investigation will be held beginning at 9:30 a.m. on May 16, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary no later than 5:15 p.m., May 7, 2007. Any pre-hearing briefs and statements should be filed no later than 5:15 p.m., May 10, 2007, and any post-hearing briefs and statements should be filed no later than 5:15 p.m., May 23, 2007; all such briefs and statements must be submitted in accordance with the requirements below under ''written submissions.'' In the event that, as of the close of business on May 7, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after May 7, 2007, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Submissions should be addressed to the Secretary. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m., May 23, 2007.

All written submissions must conform with the provisions of § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by

facsimile or electronic means, except to the extent permitted by § 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic—filing—handbook.pdf*. Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*.

Any submissions that contain confidential business information must also conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission intends to prepare only a public report in this investigation. The report that the Commission sends to the President and the Congress and makes available to the public will not contain confidential business information. Any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: April 26, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–8256 Filed 5–1–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA) Section 167—The National Farmworker Jobs Program (NFJP)

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice of formula allocations for the Program Year (PY) 2007 NFJP, request for comments.

SUMMARY: Under Section 182(d) of the WIA of 1998, ETA is publishing the PY 2007 allocations for the NFJP, authorized under Section 167 of the WIA. The allocations are distributed to the states by a formula that estimates, by state, the relative demand for NFJP services. The allocations in this notice apply to the PY beginning July 1, 2007.

DATES: Comments must be submitted on or before May 29, 2007.

ADDRESSES: Comments should be sent to Alina M. Walker, Program Manager, Division of Adult Services, Room S–4209, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, e-mail address: *walker.alina@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Alina M. Walker, Program Manager, Division of Adult Services, Room S–4209, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2706 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background.

On May 19, 1999, ETA published a notice establishing new factors for the formula that allocates funds available for the NFJP in the **Federal Register** at 64 FR 27390. This **Federal Register** notice is available at the following Internet address: *http://www.doleta.gov/MSFW/pdf/allocationtable.pdf*

The May 19, 1999, **Federal Register** may also be obtained by submitting a mail, e-mail or telephone request to Alina M. Walker, Program Manager, Division of Adult Services, Room S–4209, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, e-mail address: *walker.alina@dol.gov,* telephone number (202) 693–2706 (this is not a toll-free number).

The May 19, 1999, notice explained the purpose of the formula, *i.e.*, distributing funds geographically by state service area on the basis of each area's relative share of farmworkers who are eligible for enrollment in the NFJP. The data used to run the formula is comprised of a combination of data sets that were selected to yield the relative share distribution across states of eligible farmworkers. The combined-data set driven formula is substantially more relevant to the purpose of aligning the allocations with the eligible population than the allocations determined by the prior formula.

For PY 2007, the data factors used in the formula remain unchanged since they were first developed in 1999. The data sets used for determining each State's relative share of eligible farmworkers for PY 2007 were last updated in PY 2005 with more recent data available from the 2000 Census, the 2003 National Agricultural Workers Survey (NAWS), and the 2002 Census of Agriculture, and also remain unchanged.

II. Limitations on Uses of Section 167 Funds

In appropriating the funds for PY 2007, Congress provided in the Fiscal Year 2007 Continuing Appropriations Resolution (Pub. L. 110–5) $79,752,000 for carrying out Section 167 of the Workforce Investment Act of 1998, including $74,302,000 for state service area grants, $4,950,000 for migrant and seasonal farmworker housing grants, and $500,000 for Section 167 training, technical assistance and related activities. Additional funding for migrant rest center activities is included in the $500,000 available for technical assistance and training.

III. PY 2007 Allocation Formula

The calculation of the PY 2007 formula allocation distribution incorporates the state-by-state relative shares of eligible farmworkers developed for the PY 2005 formula allocations, using the updated data sets described above, with various adjustments applied since then. The PY 2005 calculation adjusted those state-by-state relative shares of eligible farmworkers by ''hold-harmless'' and ''stop-loss''/''stop-gain'' limits due to the introduction of the updated data. The following year, the PY 2006 formula allocations were proportionately based on the PY 2005 formula allocations and further adjusted by an additional $3.8 million appropriated by Congress for states whose PY 2005 allocation had been reduced as a result of the updated data used for the PY 2005 allocation distribution. Detailed descriptions of the formula methodology for PY 2005 and 2006 are provided in the applicable announcements.

The PY 2007 appropriation for the WIA Section 167 program is $74,302,000, which is $470 less than the corresponding PY 2006 appropriation. To maintain stability of funding for the program and consistency with the PY 2006 congressional directions to the Department, the Department will distribute the $74,302,000 of PY 2007 formula funding among all states in the same proportion as the distribution of the PY 2006 formula allocations.

IV. State Combinations

We anticipate a single plan of service for operating the PY 2007 NFJP in the jurisdiction comprised of Delaware and Maryland and the jurisdiction

comprised of Rhode Island and Connecticut.

V. PY 2007 Allocations

The ''Allocation Table'' provides the allocations for the NFJP in PY 2007. NFJP grantees and other interested organizations should use these figures in preparing proposals in response to the PY 2007 Solicitation for Grant Applications (SGA) for the National Farmworker Jobs Program (NFJP).

Signed at Washington, DC, this 26th day of April 2007.

Emily Stover Derocco,

Assistant Secretary, Employment and Training Administration.

BILLING CODE 4510–FN–P

U. S. Department of Labor
Employment and Training Administration

National Farmworker Jobs Program PY 2007 Allocations to States

State	Total
Total	$74,302,000
Alabama	751,940
Alaska	-
Arizona	2,024,898
Arkansas	1,087,048
California	18,975,739
Colorado	949,495
Connecticut	334,618
Delaware	120,508
Dist of Columbia	-
Florida	3,936,678
Georgia	1,454,864
Hawaii	313,798
Idaho	1,020,556
Illinois	1,364,635
Indiana	876,895
Iowa	1,117,228
Kansas	1,020,660
Kentucky	1,149,714
Louisiana	864,794
Maine	278,285
Maryland	344,211
Massachusetts	305,771
Michigan	1,328,620
Minnesota	1,171,736
Mississippi	1,231,679
Missouri	936,077
Montana	567,107
Nebraska	1,033,257
Nevada	170,675
New Hampshire	96,785
New Jersey	661,093
New Mexico	898,929
New York	1,573,057
North Carolina	2,555,087
North Dakota	576,818
Ohio	1,196,289
Oklahoma	1,208,432
Oregon	1,872,356
Pennsylvania	1,466,884
Puerto Rico	2,903,935
Rhode Island	36,742
South Carolina	918,084
South Dakota	588,935
Tennessee	814,124
Texas	6,336,105
Utah	274,611
Vermont	181,163
Virginia	880,969
Washington	2,934,063
West Virginia	186,425
Wisconsin	1,187,503
Wyoming	222,125

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DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Youthful Offender Registered Apprenticeship, Alternative Education, and Project Expansion Grants

AGENCY: Employment and Training Administration, U.S. Department of Labor.

Announcement Type: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 06–10.

Catalog Federal Assistance Number: 17.261.

SUMMARY: The Employment and Training Administration announces the availability of approximately $20 million for Youthful Offender Grants. These grants will be awarded through a competitive process for three categories of projects—(1) Registered Apprenticeship (to increase the placement of young adults being released from the criminal justice system in registered apprenticeship); (2) Alternative Educational Pathways (to increase the educational achievement and attainment of youth in the juvenile justice system); and (3) Project Expansion (to replicate effective programs for serving juvenile offenders). Applicants can apply for grants in more than one of these categories, but separate applications must be submitted for each category.

This solicitation provides background information and describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantees.

DATES: *Key Dates:* The closing date for receipt of applications under this announcement is May 31, 2007. Application and submission information is explained in detail in Part IV of this SGA. There will be a Prospective Applicant Webinar held for this grant competition. The date and access information for this Prospective Applicant Webinar will be posted on ETA's Web site at *www.doleta.gov/youth—services.*

ADDRESSES: Applications that do not meet the conditions set forth in this notice will not be considered. No exceptions to the submission requirements set forth in this notice will be granted. For detailed guidance, please refer to Section IV.C.

SUPPLEMENTARY INFORMATION: This solicitation consists of eight parts:

Part I provides a description of this funding opportunity.

Part II describes the size and nature of the anticipated awards.

Part III describes eligibility information.

Part IV provides information on the application and submission process.

Part V describes the criteria against which applications will be reviewed and explains the proposal review process.

Part VI provides award administration information.

Part VII contains DOL agency contact information.

Part VIII lists additional resources of interest to applicants and other information.

I. Funding Opportunity Description

Over the next decade, the percentage of workers between the ages of 16 and 24 is expected to grow more rapidly than the overall workforce. The 21st century economic landscape is rapidly changing with technology and globalization altering the nature of work and the skills and training needed by workers to compete in this new reality. Ninety percent of the fastest growing jobs in the United States today require post-secondary education. Therefore, the rapidly growing youth labor force is emerging at a time where advanced education, skills, and abilities have a heightened importance in preparing the talent employers will need to populate their workforce.

This issue has significant impact on the economic development of communities, states, and regional economies and in particular relates to ETA's WIRED framework, which recognizes the role of talent development strategies in driving economic growth and job creation within regional economies. For regional economies to grow successfully, youth strategies need to be fully integrated with a region's talent development strategies in support of economic growth. The workforce investment system plays a vital role in addressing the need to develop deep talent pools of young workers who serve as a ''youth supply pipeline'' to help drive regional economic growth.

The overarching goal for this solicitation is to improve the long-term career prospects of young offenders by increasing both the educational attainment of juvenile offenders and the employment outcomes of young adult offenders. Both youth in the juvenile justice system and adults in the criminal justice system face severe educational and labor market barriers. The White House Task Force for Disadvantaged Youth notes that illiteracy and school failure are serious and widespread among youth in detention, correctional, and shelter facilities, with such youth typically scoring between grades 5 and 7 in reading and between grades 5 and 9 in math. An American Bar Association Report notes that the percentage of youth in juvenile correctional facilities who were served in special education programs prior to their incarceration is at least three to five times the percentage of the general public school population identified as learning disabled.

Court-involved youth are predominantly male and disproportionately minority youth. In 2000, minority youth made up about 32 percent of the U.S. population, but 58 percent of youth in juvenile facilities. African American youth under age 18 make up 15 percent of the youth population, but 26 percent of all juvenile arrests and 44 percent of the detained population.

Multiple risk factors and events converge in the lives of young people and put them at high risk for coming into contact with the justice system. The Department of Justice (DOJ) collects data on youth offenders and adjudicated youth both through research studies and reports from the state corrections departments. One study by DOJ's Office of Juvenile Justice and Delinquency Prevention (OJJDP) that surveyed administrators at public and private detention centers and training schools found that 75 percent of the offenders come from families affected by problems such as divorce and separation, 52 percent showed signs of depression, and 51 percent appeared to have been abused by a parent or adult. Mental illness is also especially high among youth offenders. Studies estimate that 80 percent of youth in the juvenile justice system have a diagnosable mental health disorder and many also suffer from co-occurring substance abuse disorders.

Adults in the criminal justice system have similarly low levels of educational achievement and attainment. An estimated 19 percent of adult state prisoners are completely illiterate and 40 percent are functionally illiterate; over half of state parole entrants are not high school graduates; and as many as eleven percent have only an eighth grade education or less. These low levels of educational achievement and attainment are steep barriers to employment when released prisoners return home. The unemployment rate among ex-prisoners has been estimated between 25 and 40 percent.

To help address these problems the Department of Labor will award grants under this announcement for youthful offender projects to improve the employment prospects of youth and young adults in the criminal justice system. Funds will be awarded for three categories of projects—(1) increasing the placement of young adults being released from the criminal justice system in registered apprenticeships; (2) increasing the educational achievement and attainment of youth in the juvenile justice system; and (3) replicating effective programs for serving young juvenile offenders. Successful grantees in all three categories will have strong collaborations with business and industry, other education institutions, and the workforce investment system at a minimum.

A. Registered Apprenticeship

The goal of this initiative is to develop and register new apprenticeship programs to serve offenders that begin during their period of incarceration. A Registered Apprenticeship is a nationally registered program overseen by the U.S. Department of Labor Office of Apprenticeship working in conjunction with state Apprenticeship Coordinators. Apprenticeship is full-time employment combined with both on-the-job training and related classroom instruction. An experienced and skilled journey worker teaches the practical skills learned on the job. Apprenticeship is based on a written agreement between the apprentice and the sponsor that stipulates the terms of the apprenticeship, such as length of training, credit for previous experience or education, increasing scale of wages, and method of education.

Applicants will develop a registered apprenticeship model that targets offenders between the ages of 18 and 24 housed in state adult correctional facilities. Requirements for this program are described in section V.A.3. of this notice. The registered apprenticeship training started under this grant is expected to be one unified program that begins within the correctional facility and continues uninterrupted post-release. The portion of the Registered Apprenticeship program participation within the correctional facility should represent no less than one year and no more than 50 percent of all combined apprenticeship training requirements. DOL expects that participants will be enrolled one to two years prior to release. This model will require applicants to form formal partnerships

with groups of employers, organized labor, employer associations, State Apprenticeship Agencies (SAAs), or the Federal Office of Registered Apprenticeship in those states where a SAA does not exist. Together, representatives of these partnerships will serve as the Advisory Council for the design and operation of this initiative.

The registered apprenticeship training developed is expected to produce skilled workers that are in demand in at least one high-growth, high-demand industry in those local area(s) where released offenders are expected to return. Such industries may include, but are not limited to, construction, healthcare, information technology, and biotechnology.

As part of a continuum of service delivery, it is expected that a seamless transition to post-release registered apprenticeship and supportive services will be accomplished. Upon release and through previously established coordination, participants will complete their registered apprenticeship training and enroll in an approved registered apprenticeship program. Direct job placement consistent with the individual offender's occupational goals will also be encouraged.

B. Alternative Educational Pathways

The Alternative Educational Pathways category will provide grants to start or enhance services to alternative and charter schools that serve youth ages 14 to 17 who have been involved in the juvenile justice system. DOL expects that grant award funds combined with leveraged funds will be sufficient to start an alternative or charter school that serves 100 youth the first year that can then be expanded in subsequent years using average daily attendance funds. Schools enhanced or started with these grant funds do not have to serve offender youth exclusively, but non-grant funds must be used to support non-offender youth in these schools. Schools started or enhanced with these grants funds must offer state-sanctioned high school diplomas. Requirements for these schools are described in section V.A.3. of this notice. Applicants that are not public school districts will need to demonstrate formal connections with their local school system. DOL envisions funding programs of various designs through these grants, but we expect that these schools will share the following attributes of strong and successful alternative education programs:

<bullet≤ *Academic Instruction:* Schools supported under these grants must offer state-recognized high school diplomas, and have a strong emphasis on improving reading and math skills of youth. The schools will offer particular support to youth who have low basic skills levels.

<bullet≤ *Instructional Staff:* Instructors in successful alternative education programs choose to be part of the program, routinely employ positive discipline techniques, and establish rapport with students and peers. They have high expectations of the youth, are certified in their academic content area, and are creative in their classrooms. They have a role in governing the school and designing the program and curriculum.

<bullet≤ *Professional Development:* Successful alternative education programs provide instructors with ongoing professional development activities that help them maintain an academic focus, enhance teaching strategies, and develop alternative instructional methods. Staff development involves teacher input, work with colleagues, and opportunities to visit and observe teaching in other settings.

<bullet≤ *Size:* Successful alternative education programs are small. They have a low teacher/student ratio and small classes that encourage caring relationships between youth and adults.

<bullet≤ *Facility:* Effective alternative learning programs are in clean and well-maintained buildings (not necessarily traditional school houses) that are attractive and inviting and that foster emotional well-being, a sense of pride, and safety. In some instances, the programs are purposely located away from other high schools in 'neutral' territory. Some reside on community college campuses and most are close to public transportation. Funds under this grant can pay for rent and limited renovations with grant officer approval, but not for new construction or purchasing a building.

<bullet≤ *Relationships/Building a Sense of Community:* Successful alternative education programs link to a wide variety of community organizations (cultural, social service, educational, etc.) and the business community to provide assistance and opportunities for participants. Through partnerships with the business community, alternative education providers are able to provide their students with job shadowing and internship opportunities, guest speakers, and company tours. They also receive valuable input into their curriculum and project development from these partners. Community organization partners can provide health care, mental health services, and cultural and recreational opportunities for youth in these schools.

<bullet≤ *Leadership, Governance, Administration, and Oversight:* Many studies highlight the need for administrative and bureaucratic autonomy and operational flexibility. Administrators, teachers, support services staff, students, and parents should be involved in the different aspects of the program. This autonomy builds trust and loyalty among the staff. A successful alternative education program has a strong, engaged, continuous, and competent leadership, preferably with a teacher/director administering the program.

<bullet≤ *Student Supports:* Successful alternative education programs support their students through flexible individualized programming with high expectations and clear rules of behavior. They provide opportunities for youth to participate and have a voice in school matters. Structure, curricula, and supportive services are designed with both the educational and social needs of the student in mind. Many schools do daily follow-up with all students who are absent or tardy, and develop reward systems to promote attendance and academic achievement. Programs are both highly structured and extremely flexible. Rules for the school, which the students help create, are few, simple, and consistently enforced. There are processes in place that assist students in transitioning from school to work and from high school to post-high school training.

<bullet≤ Other factors contributing to successful alternative education programs include clearly identified goals; the integration of research into practice in areas such as assessment, curriculum, and teacher training; the integration of special education services and ESL; connections with national organizations with local affiliations that support workforce development, academic support, and stable and diverse funding.

Applicants for a grant under this section may want to consider designs that include the following characteristics:

<bullet≤ Support to dropouts that augment existing high school classroom credit with college level courses resulting in dual high school and college level credit;

<bullet≤ Education and supportive services to participants that offer a rigorous literacy and student engagement program, targeting participants who read significantly below grade level and including a structured ''restorative practices'' approach that emphasizes

structure and high expectations, as well as counseling and support;

<bullet≤ Classroom and vocational training structures that incorporates either an alternating week or alternating half-day schedules;

<bullet≤ Education and career programming organized around such themes as health, business and finance, and computer technology that support participants taking classes together, remaining with the same group of teachers/instructors over time, while providing a combination of academic and career-oriented courses, and offer participants the opportunity to work in internships and other career-related experiences with corporate sponsors; and

<bullet≤ Educational settings where the completion of high school is determined by proficiency, rather than by seat time and where teachers demonstrate for students how to apply learning strategies during related coursework and internships while assisting in the development of individual portfolios that capture and demonstrate student mastery.

Educational tools and approaches that applicants may also want to consider as part of their project design include:

<bullet≤ Educational software available from various commercial dealers designed specifically to increase the reading and math skills of low-performing students.

<bullet≤ Credit retrieval or recovery programs that make use of educational software available from various commercial dealers to allow students to make up lost credits while working towards a high school diploma.

<bullet≤ Education transition coordinators to help students resolve issues that may cause them to drop out of school, compile credits that may have been earned while in correctional facilities or other schools, apply to college, and make career plans.

C. Project Expansion

Currently there are program models and organizations that operate ''cutting edge'' youth development and training programs in one or more locations across the country. These programs often include integrated learning and training strategies that engage and prepare youth for the world of work, provide individual guidance and support to participants through caring adults, achieve high levels of program performance, and are led by dynamic and innovative leaders. Other key attributes include: meaningful work opportunities, including graduated transitional employment that allows youth to start with public subsidized jobs and work up to private sector unsubsidized jobs; access to an array of social support through other agencies, including help resolving child support issues, outstanding bench warrants, and substance abuse treatment; relevant and rigorous educational opportunities and support; and leadership development and community service learning opportunities.

The Employment and Training Administration is very interested in providing organizations that have been able to achieve outstanding outcomes in one or more existing program sites, an opportunity to further replicate their program model. The third part of the solicitation will provide applicants funding to expand proven and successful program models into additional communities to serve youth ages 14 to 21 who are involved, have been involved, or are at high risk of involvement in the juvenile justice system. Applicants are requested to propose replicating an existing model project in at least two additional sites. The implementing organization would be expected to provide leadership and technical assistance to the new sites as part of its overall responsibility for implementing this project, partner with a variety of educational, juvenile justice, and social service agencies, and provide a demand-driven focus that engages employers and high-growth industries within the new locations. Leveraged resources can be used to provide services not allowable with DOL grant funds.

Allowable uses of grant funds for youthful offender projects across all three categories are as follows:

(1) Education and workforce activities, such as:

<bullet≤ Basic skills instruction and remedial education;

<bullet≤ Language instruction educational programs for individuals with limited English proficiency;

<bullet≤ Tutoring, credit retrieval programs, dropout prevention activities, GED instruction, and career awareness classes;

<bullet≤ Counseling and assistance in obtaining postsecondary education and required financial aid ;

<bullet≤ Alternative secondary school services;

<bullet≤ Job placement services;

<bullet≤ Vocational skills training;

<bullet≤ Occupational skills training; and

<bullet≤ Paid and unpaid work experiences, including internships and job shadowing.

(2) Case management services and related activities, such as mentoring and comprehensive guidance and counseling on drug and alcohol abuse and referral;

(3) Participant personal development activities that seek to develop non-technical skills, abilities, and traits that participants need to function in a specific employment environment that support one or more workplace competencies including problem-solving and other cognitive skills, oral communication skills, personal qualities, and work ethic, and interpersonal and teamwork skills. Examples include leadership training, financial literacy, and job readiness training;

(4) Supportive housing, mental health and substance abuse referral services as may be available;

(5) The provision of stipends or need-based stipends necessary to enable individuals to participate in the program; and

(6) Follow-up services that focus efforts on job retention, wage gains and career progress through regular contact with participant employers, including assistance in addressing work-related problems that arise, assistance in securing better paying jobs, career development and further education, work-in peer support groups, adult mentoring, and tracking of progress made by participants in employment after training.

II. Award Information

A. Award Amount

Funding for the three categories of awards is expected to be as follows: Registered apprenticeship, four grants at $1 million each; Alternative Educational Pathways, six grants at $1 million each; and Expansion, five grants at $2 million each. Applicants are required to submit budgets within this financial range. The budget should reflect a phased approach that anticipates a planning period of up to 6 months followed by 12 full months of project operations and service delivery. Each grant may receive additional years of funding depending on the availability of such funds and satisfactory performance. At the Department's discretion, no-cost extensions maybe granted. If an insufficient number of acceptable applications are received for any category of award, the Department may decide to fund additional awards in another category.

B. Period of Performance

Grants will be awarded for an 18 month period of performance. This period of performance includes a 90-day planning period prior to project implementation and 12 full months of direct service delivery.

III. Eligibility Information and Other Grant Specifications

A. Eligible Applicants

Registered Apprenticeship: Applicants may be faith-based and community organizations, national community-based organizations, State Apprenticeship Agencies, state workforce agencies, local workforce investment boards, state correctional agencies, Indian/Native American, Native Hawaiian, Alaskan Native and Pacific Islander Tribal Governments or organizations that are Federally recognized.

Alternative Educational Pathways: Applicants may be public school districts, faith-based and community organizations currently operating or wishing to operate charter schools, state or local juvenile justice agencies, local workforce investment boards, Indian/Native American, Native Hawaiian, Alaskan Native and Pacific Islander, Tribal Governments or organizations that are Federally recognized.

Project Expansion: Applicants may be national or local community and faith-based organizations, local workforce investment boards, Indian/Native American, Native Hawaiian, Alaskan Native and Pacific Islander Tribal Governments or organizations that are federally recognized.

B. Cost Sharing or Matching

For all three categories, leveraged resources must equal at least 20 percent of the requested amount. These resources can be Federal and non-Federal and can be in-kind or cash. Applicants will be rated on both the quality and the amount of leveraged resources. Leveraged resources can come from a variety of sources, including: Public sector (e.g., Federal, state, or local governments); non-profit sector (e.g., community organizations, faith-based organizations, or education and training institutions); private sector (e.g., businesses or industry associations); investor community (e.g., angel networks); philanthropic community; and the economic development community. Applicants must describe in detail how such leveraged funds will be used and demonstrate how these funds will contribute to the goals of the project.

C. Other Eligibility Requirements

Eligible Enrollees

Registered Apprenticeship: An individual may participate in a registered apprenticeship-focused project only if such individual is:

<bullet≤ Between the ages of 18 and 24 on the date of enrollment; and

<bullet≤ Incarcerated in a state adult correctional facility with at least one year remaining on their sentence.

Alternative Educational Pathways: An individual may participate in an alternative educational pathways project only if such individual is:

<bullet≤ Between the ages of 14 and 17 on the date of enrollment; and

<bullet≤ Is returning from a juvenile detention or juvenile correctional facility, is on probation through the juvenile justice system, or has previously been detained or put on probation through the juvenile justice system.

Expansion: An individual may participate in an expansion project if such individual:

<bullet≤ Is between the ages of 14 to 21 at enrollment; and

<bullet≤ Is involved, has been involved, or is at high risk of involvement in the juvenile justice system. For the purposes of eligibility for services under this category, indicators of high risk of involvement in the juvenile justice system include poor school attendance; low grade point average; low standardized test scores; retention in the 8th, 9th, 10th, or 11th grades; discipline problems or suspension from school; special education placement; and low reading and math skills.

Legal Rules Pertaining to Inherently Religious Activities by Organizations that Receive Federal Financial Assistance. The government is generally prohibited from providing direct financial assistance for inherently religious activities. See 29 CFR Part 2, Subpart D. Provision relating to the use of indirect support (such as vouchers) are at 29 CFR 2.33(c) and 20 CFR 667.266. These grants may not be used to directly support religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the Workforce Investment Act of 1998 and DOL regulations implementing the Workforce Investment Act, a recipient may not use direct Federal assistance to train a participant in religious activities, or employ participants to construct, operate, or maintain any part of a facility that is used or to be used for religious instruction or worship. See 29 CFR 37.6(f). Under WIA, ''no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.''

D. Veterans Priority

This program is subject to the provisions of the ''Jobs for Veterans Act,'' Public Law 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that to obtain priority of service, a veteran must meet the grantee's program eligibility requirements. ETA Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003), available at: *http://wdr.doleta.gov/directives/corr—cfm?DOCN=1512*, provides general guidance on the scope of the veterans priority statute and its effect on current employment and training programs.

IV. Application and Submission Information

A. Address to Request Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal will consist of two separate and distinct parts—a cost proposal and a technical proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered.

Part I. The Cost Proposal. The Cost Proposal must include the following three items:

<bullet≤ The Standard Form (SF) 424, ''Application for Federal Assistance'' (available at *http://www.whitehouse.gov/omb/grants/sf424.pdf*). The SF 424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF 424 on behalf of the applicant shall be considered the representative of the applicant.

<bullet≤ All applicants for Federal grant and funding opportunities are required to have a Dun and Bradstreet (DUNS) number. See Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). Applicants must supply their DUNS number on the SF 424. The DUNS number is a nine-digit identification

number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access this website: *www.dunandbradstreet.com* or call 1–866–705–5711.

<bullet≤ The SF 424A Budget Information Form (available at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*). In preparing the Budget Information Form, the applicant must provide a detailed backup budget for both the planning and service delivery periods in addition to the narrative explanation in support of the request. The budget narrative should break down the budget and leveraged resources by project activity, should discuss cost-per-participant, and should discuss precisely how the administrative costs support the project goals. Applicants can budget up to 10% of grant funds for use during the planning period prior to the actual implementation of the project's service delivery strategy. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form.

Please note that applicants who fail to provide a SF 424, SF 424A and/or a budget narrative will be removed from consideration prior to the technical review process. If the proposal calls for integrating WIA or other Federal funds or includes other leveraged resources, these funds should not be listed on the SF 424 or SF 424A Budget Information Form, but should be described in the budget narrative and in Part II of the proposal. The amount of Federal funding requested for the entire period of performance should be shown on the SF 424 and SF 424A Budget Information Form. Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found at *http://www.doleta.gov/sga/forms.cfm.*

Part II. The Technical Proposal. The Technical Proposal will demonstrate the applicant's capability to plan and implement a project consistent with the application category selected and in accordance with the provisions of this solicitation. The guidelines for the content of the Technical Proposal are provided in Part V Section A of this SGA. The Technical Proposal is limited to twenty (20) double-spaced single-sided pages with 12 point text font and one-inch margins. Any pages submitted in excess of this 20 page limit will not be reviewed. In addition, the applicant must provide an organization chart for staff that will operate the proposed project. In instances where the project is part of a larger organization (i.e. a lead human services agency), please include a diagram that indicates where the proposed project will fit within the larger organization. Also, the applicant must provide a timeline outlining project activities; a two-page Abstract summarizing the proposed project including applicant name, project title, and the funding level requested. These additional materials do not count against the 20-page limit for the Technical Proposal, but may not exceed fifteen (15) pages.

Applicants submitting proposals in hard-copy must submit an original signed application (including the SF–424) and one (1) ''copy-ready'' version free of bindings, staples or protruding tabs to ease in the reproduction of the proposal by DOL. Applicants submitting proposals in hard-copy are also requested, though not required, to provide an electronic copy of the proposal on CD–ROM.

C. Submission Date, Times, and Addresses

The closing date for receipt of applications under this announcement is May 31, 2007. Applications must be received at the address below, or electronically received at the website below, no later than 5 p.m. (Eastern Daylight Saving Time), except as identified in the ''Late Applications'' paragraph below. Applications sent by mail, e-mail, telegram, or facsimile (fax) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the requirements set forth in this notice will be granted.

Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: James W. Stockton, Reference SGA/DFA PY 06–10, 200 Constitution Avenue, NW., Room N–4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. Applicants may apply online at *http://www.grants.gov* by the deadline specified above. Any application received after the deadline will not be accepted. For applicants submitting electronic applications via *Grants.gov*, please note that it may take several days to complete the ''Get Started'' step to register with *Grants.gov*. It is strongly recommended that these applicants immediately initiate this step in order to avoid unexpected delays that could result in the disqualification of their application. If submitted electronically through *http://www.grants.gov*, applicants should save applications documents as a .doc or .pdf file. It is the sole responsibility of the applicant to ensure timely submission.

Late Applications: Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, was properly addressed, and: (a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application required to be received by the 20th of the month must be post marked by the 15th of that month) or (b) was sent by professional overnight delivery service or submitted on *Grants.gov* to the addressee not later than one working day prior to the date specified for receipt of applications. It is highly recommended that online submissions be completed one working day prior to the date specified for receipt of applications to ensure that the applicant still has the option to submit by overnight delivery service in the event of any electronic submission problems. ''Post marked'' means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the delivery service provider indicating the time and place of receipt.

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

C. Intergovernmental Review

This funding opportunity is not subject to Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs.''

D. Funding Restrictions

All proposal costs must be necessary and reasonable in accordance with Federal guidelines. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, e.g., Non-Profit Organizations—OMB Circular A–122. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant. Applicants will not be entitled to reimbursement of pre-award costs.

Indirect Costs. As specified in OMB Circulars on Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular cost objective. In order to utilize grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal Cognizant Agency either before or shortly after the grant award. The Federal Cognizant Agency is generally determined based on the preponderance of Federal dollars received by the recipient.

Administrative Costs. An entity that receives a grant to carry out a project or program may not use more than 15 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be both direct and indirect costs and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF 424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate Agreement from its Federal Cognizant Agency as specified above.

V. Application Review Information

A. Evaluation Criteria

This section identifies and describes the criteria that will be used to evaluate proposals submitted. These criteria and point values are:

Criterion	Points
1. Statement of Need	15
2. Program Management and Organizational Capacity	20
3. Project Design, Service Strategy, and Program Outcomes	50
4. Linkages to Key Partners, Leveraged Resources, and Sustainability	15
Total Possible Points	100

The rated components listed above make up the Technical Proposal (along with the additional requirements listed in section IV. B).

1. Statement of Need (15 points)

Registered Apprenticeships:

<bullet≤ Describe the need in the communities to which most of the prisoners enrolled in the program will be returned.

<bullet≤ Discuss the poverty rate, unemployment rate, and crime rate in these communities.

Alternative Educational Pathways:

<bullet≤ Describe the need in the communities that will be served by the proposed project.

<bullet≤ Discuss the level of success local schools have experienced in complying with the requirements of the No Child Left Behind Act of 2001.

<bullet≤ Provide the most recent cohort dropout rate for the comprehensive high school that serves the community to be served by comparing the number of students who entered the 9th grade at the high school in September 2002 with the number of students in the graduating class at the high school in June 2006.

<bullet≤ Provide the poverty rate, unemployment rate, and crime rate of the community to be served.

Project Expansion:

<bullet≤ Describe the need for this project in the communities to be served.

<bullet≤ Provide the poverty rate, unemployment rate, and crime rate of the communities to be served.

Proposals in all three categories will be evaluated under this criterion based on:

<bullet≤ The case that they make for the need for the project in the communities to be served, which for the apprenticeship category are the communities to which most prisoners served will be returned.

<bullet≤ The poverty rate, unemployment rate, and crime rate of these communities, and in the case of the alternative educational pathways category the dropout rate of the comprehensive high school that serves the community.

2. Program Management and Organizational Capacity (20 points)

Registered Apprenticeships and Alternative Educational Pathways:

<bullet≤ Provide a description of the organization applying for the grant and a statement of its qualifications for conducting this project, including years of operation, current annual budget, experience of staff, continuity of leadership and the relevant experience of management.

<bullet≤ Discuss the professional development activities available to staff, either on-site or through training funds.

<bullet≤ Describe any previous projects similar to the proposed apprenticeship or alternative education pathways demonstration that the organization has successfully conducted.

<bullet≤ Describe the fiscal controls in place in your organization for auditing and accountability procedures, and the organizations track record for fiscal integrity.

Project Expansion:

<bullet≤ Describe project leadership skills, staff qualifications, and overall capacity to implement project expansion into other communities.

<bullet≤ Describe any previous projects similar to this project expansion demonstration that the organization has successfully conducted.

<bullet≤ Describe any previous efforts of the organization to establish multiple partnerships with public and private sector organizations.

<bullet≤ Describe the fiscal controls in place in your organization for auditing and accountability procedures; and the organizations track record for fiscal integrity.

Proposals in all three categories will be evaluated under this criterion based on:

<bullet≤ The capacity of the organization and staff to effectively carry out this project, particularly as demonstrated by past success in conducting similar projects.

<bullet≤ The sound fiscal management procedures of the organizations, particularly as demonstrated by a consistent record of fiscal integrity.

3. Project Design, Key Partners, Service Strategy, and Program Outcomes (50 points)

Registered Apprenticeship:

<bullet≤ Describe the apprenticeship training program that will be started with these grant funds, specifying the occupations that will be the focus of the program.

<bullet≤ Identify the unions and/or employers that will be the sponsoring agency(ies) for the registered apprenticeship program, and provide a memorandum or understanding or letter from these unions or employers indicating that they will be the sponsoring agencies for the project.

<bullet≤ Describe the experience of the sponsoring agency(ies) in conducting apprenticeship training, including any currently operating apprenticeship training that they are providing.

<bullet≤ Identify the firms and unions that will serve on the advisory council for the apprenticeship program, and provide letters from these firms and unions indicating that they will serve on the advisory council.

<bullet≤ Provide the number of expected registered apprenticeship participants the project will enroll during the initial year of the grant, and the number of participants who will complete the combined pre-release and post-release phases of their apprenticeship training.

<bullet≤ Identify the number of individuals that will be served by this program when fully operational.

<bullet≤ Identify how inmates will be selected for the registered apprenticeship program, and at what point prior to release they will be enrolled in the program.

<bullet≤ Describe the characteristics of the inmates the project expects to serve.

<bullet≤ Describe the state correctional institution where the registered apprenticeship program will be started.

<bullet≤ Describe the steps that will be taken to implement this program, including a time-line for project implementation.

<bullet≤ Describe the skill shortages in the communities to which most of the prisoners enrolled in the program will be returned.

<bullet≤ Describe the availability of placement slots in registered apprenticeship program(s) in those communities where offenders are likely to return; i.e., compare the number of slots with the number of applicants for these slots.

<bullet≤ Describe the specific role of the sponsoring agencies in the proposed program, including how the sponsoring agencies will ensure a placement in the post-release phase of the apprenticeship for all individuals who completed the pre-release phase of the apprenticeship.

<bullet≤ Describe the types of post-release transition services (defined as services that will assist the participant in making a successful transition from the pre-release to the post-release phases of the apprenticeship) that will be provided.

<bullet≤ Describe the types of post-transition follow-up services that will be provided.

Alternative Educational Pathways:

<bullet≤ If an alternative or charter school will be started with grant funds, describe the key features of the planned school. If an alternative or charter school will be enhanced with grant funds, clearly delineate the current offerings of the school and what enhancements will be made.

<bullet≤ Discuss how the local juvenile justice system will be a partner in this project, and include a memorandum of understanding or letter from the juvenile justice system describing their role in the project.

<bullet≤ If the applicant is not a public school district, indicate how the public school system will coordinate with the project, and include a memorandum of understanding or letter from the school district describing their role in the project.

<bullet≤ Discuss how youth will be referred from the juvenile justice system to the school.

<bullet≤ Identify the number of individuals that will be served by this program when fully operational.

<bullet≤ Describe the characteristics of the youth the project expects to serve.

<bullet≤ Describe the educational barriers faced by the youth who will be served, and which program components will address these educational barriers.

<bullet≤ Describe the intensive remedial reading and math component that will be provided, given that youth offenders are on average below grade level in these subjects.

<bullet≤ Describe how the school will provide a structured environment for youth that promotes high expectations among both staff and students.

<bullet≤ Describe how staff will be selected for the school, ensuring that the staff are selected competitively and desire to be assigned to the school.

<bullet≤ Discuss plans for accessing average daily attendance funds to help support the school.

<bullet≤ If a school will be started with grant funds, provide a timeline and the steps needed to get the school started.

<bullet≤ If non-offender youth are attending or will attend the school, discuss what complementary funds will be provided to cover the share of services being provided to these youth.

Expansion:

<bullet≤ Provide a basic description of the program to be replicated.

<bullet≤ Utilizing a minimum cohort of 50 participants, provide information that will demonstrate project effectiveness in the following workforce related outcomes:

<bullet≤ Unsubsidized full-time employment

<bullet≤ Placement in post secondary institutions

<bullet≤ High school diploma and/or GED attainment

<bullet≤ Provide a detailed outline the major components leading to full project replication inclusive of major milestones and over-all project timeline.

<bullet≤ Describe what efforts will be undertake to establish workforce, justice system, community, business and school-based partnerships sufficient to support project expansion.

<bullet≤ Describe the organization's commitment to implementing this project expansion.

<bullet≤ Provide a plan and describe the short-term and on-going technical assistance that will be provided to the additional project sites.

<bullet≤ Describe how enrollees will be referred to the expansion project sites.

<bullet≤ Indicate how many individuals will be served at expansion sites during the initial year of the project, and how many will be served each year when the expansion sites are fully mature.

Proposals in all three categories will be evaluated under this criterion based on:

<bullet≤ The quality of the proposed design, including its practicality and its potential for having a positive impact on persons to be served.

<bullet≤ The likelihood that the proposed project will be implemented successfully, as indicated by the extent to which the applicant demonstrates that it has thought through how it will implement the project and in the case of the apprenticeship and alternative education categories has in place the necessary partnerships to start the project. Applicants for the expansion category are not expected to have necessary partnerships in place.

4. Linkages to Additional Partners, Leveraged Resources, and Sustainability (15 points)

All applicants:

<bullet≤ Describe the additional partners that will be supporting the proposed project other than those required in the above section. Successful grantees will have strong collaborations with business and industry, other education institutions, and the workforce investment system at a minimum.

<bullet≤ Include as an attachment letters of commitment from these additional partners.

<bullet≤ Describe what leveraged resources are being contributed to the project. Leveraged resources must amount to a minimum of 20 percent of the requested grant award for all applications. The description of leveraged resources must be supported by explicit MOUs or letters of commitment and describe the resource amount and type (in-kind, cash, etc.).

<bullet≤ Describe plans for sustaining the project after DOL grant funds cease.

Proposals in all three categories will be evaluated under this criterion based on:

<bullet≤ The quality of collaborations with partners such as business and industry, education institutions, and the workforce investment system.

<bullet≤ The amount and quality of leveraged resources.

<bullet≤ How detailed and plausible a case is made for the sustainment of the project after DOL grant funds cease.

B. Review and Selection Process

Proposals that are timely and responsive to the requirements of this SGA will be rated against the criteria listed above by an independent panel comprised of representatives from DOL and other peers. Each of the three categories will be rated separately. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as urban, rural, and geographic balance; the availability of funds; and which proposals are most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. If an insufficient number of acceptable applications are received for any category of award, the Department may decide to fund additional awards in another category. The Government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF 424, which constitutes a binding offer by the applicant (including electronic signature via E-Authentication on *http://www.grants.gov*).

C. Anticipated Announcement and Award Dates

The anticipated date of announcement and award is June 30, 2007.

VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution. The notice of award signed by the Grants Officer will serve as the authorizing document. Applicants not selected for award will be notified by mail.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees, including faith-based organizations, will be subject to all applicable Federal laws (including provisions of appropriation laws), regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA must comply with all provisions of this solicitation and will be subject to the following statutory and administrative standards and provisions, as applicable to the particular grantee:

1. 20 Code of Federal Regulations (CFR) 667.220, administrative costs;
2. Non-Profit Organizations—OMB Circular A–122 (cost principles) and 29 CFR part 95 (administrative requirements);
3. Educational Institutions—OMB Circular A–21 (cost principles) and 29 CFR part 95 (administrative requirements);
4. State, local and Indian Tribal—OMB Circular A–87 (cost principles) and 29 CFR part 97 (administrative requirements);
5. All entities must comply with 29 CFR parts 93 and 98 and, where applicable, 29 CFR parts 96 and 99;
6. In accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611), non-profit entities incorporated under Internal Revenue Service Code section 501(c)(4) that engage in lobbying activities are not eligible to receive Federal funds and grants;
7. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries;
8. 29 CFR part 30—Equal Employment Opportunity in Registered Apprenticeship and Training;
9. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964;
10. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance;
11. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor;
12. 29 CFR part 35—Nondiscrimination on the Basis of Age in Program or Activities Receiving Federal Financial Assistance from the Department of Labor;
13. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance;
14. 29 CFR part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA);
15. 29 CFR part 1926, Safety and Health Regulations for Construction of the Occupational Safety and Health Act (OSHA); and
16. 29 CFR part 570, Child Labor Regulations, Orders and Statements of Interpretation of the Employment Standard Administration's Child Labor Provisions.

Note: Except as specifically provided in this Notice, DOL/ETA's acceptance of a proposal and award of Federal funds to sponsor any program(s) do not provide a waiver of any grant requirements and/or procedures. For example, OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, the DOL/ETA's award does not provide the justification or basis to sole source the procurement, i.e., avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

2. Special Program Requirements

Evaluation. DOL may require that the program or project participate in an evaluation. To measure the impact of the project, DOL may arrange for or conduct an independent evaluation of the outcomes and benefits of the project. The grantee must agree to make records on participants, employers and funding available, and to provide access to program operating personnel and participants, as specified by the evaluator(s) under the direction of DOL, including after the expiration date of the grant.

ETA Intellectual Property Rights. Applicants should note that grantees must agree to provide DOL/ETA a fully paid, nonexclusive and irrevocable license to reproduce, publish, or otherwise use for Federal purposes all products developed or for which ownership was purchased under an award, including but not limited to curricula, training models, technical assistance products, and any related materials. Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise.

C. Reporting and Accountability

The Registered Apprenticeship grants will be accountable for the adult WIA core measures including placements, earnings change, and retention. Alternative Educational Pathways grants will be accountable for the youth common measures including reading and math gains and educational attainment. Project expansion grants will be subject to performance measures based upon project focus.

Quarterly financial reports, quarterly progress reports, and MIS data will be submitted by the grantee electronically. Grantees must agree to meet DOL

reporting requirements. The grantee is required to provide the reports and documents listed below:

Quarterly Financial Reports. A Quarterly Financial Status Report (SF 269) is required until such time as all funds have been expended or the grant period has expired, whichever is sooner. Quarterly reports are due 30 days after the end of each calendar year quarter. Grantees must use ETA's On-Line Electronic Reporting System; information and instructions will be provided to grantees.

Quarterly Progress Reports. The grantee must submit a quarterly progress report based on a DOL template to its designated Federal Project Officer within 30 days after the end of each quarter. This report should provide a detailed account of activities undertaken during that quarter. The quarterly progress report should be in narrative form and should include:

1. In-depth information on accomplishments, including project success stories, upcoming grant activities, and promising approaches and processes.
2. Progress toward performance outcomes, including updates on product, curricula, and training development.

MIS Reports. Organizations will be required to submit updated MIS data based on a DOL template that reports on enrollment, services provided, placements, outcomes, and follow-up status.

VII. Agency Contacts

For further information regarding this SGA, please contact B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, at (202) 693–3296 (please note this is not a toll-free number). Applicants should fax all technical questions to (202) 693–2705 and must specifically address the fax to the attention of B. Jai Johnson and should include SGA/DFA PY 06–10, a contact name, fax and phone number, and e-mail address. This announcement is being made available on the ETA Web site at *http://www.doleta.gov/sga/sga.cfm*, at *http://www.grants.gov,* and in the **Federal Register**.

VIII. Additional Resources and Other Information

A. Resources for the Applicant

DOL maintains a number of web-based resources that may be of assistance to applicants:

<bullet≤ Questions and responses submitted to the Grant Officer regarding the SGA will be posted on the Employment and Training website at *http://www.doleta.gov.* Questions will be received for one month after publication.

<bullet≤ The Web site for the Employment and Training Administration (*http://www.doleta.gov*) is a valuable source for background information on the President's High Growth Job Training Initiative.

<bullet≤ The Workforce ³ One Web site (*http://www.workforce3one.org*) is a valuable resource for information about demand driven projects of the workforce investment system, educators, employers, and economic development representatives.

<bullet≤ America's Service Locator (*www.servicelocator.org*) provides a directory of the nation's One-Stop Career Centers.

<bullet≤ Career Voyages (*www.careervoyages.com*), a Web site targeted at youth, parents, counselors, and career changers, provides information about career opportunities in high-growth/high-demand industries.

<bullet≤ Applicants are encouraged to review ''Help with Solicitation for Grant Applications'' (*http://www.dol.gov/cfbci/sgabrochure.htm*).

<bullet≤ For a basic understanding of the grants process and basic responsibilities of receiving Federal grant support, please see ''Guidance for Faith-Based and Community Organizations on Partnering with the Federal Government'' (*http://www.whitehouse.gov/government/fbci/guidance/index.html*).

B. Other Information

OMB Information Collection No.: 1205–0458.

Expires: September 30, 2009.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, the OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503. Please do not return your completed application to the OMB. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The information collected through this ''Solicitation for Grant Applications'' will be used by the Department of Labor to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

James W. Stockton,

Grant Officer, Employment and Training Administration.

[FR Doc. E7–8345 Filed 5–1–07; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Technical Study Panel on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of meeting.

SUMMARY: This notice informs interested persons of the third meeting of the Technical Study Panel (Panel) on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining. The public is invited to attend.

DATES: The meeting will be held on May 16–17, 2007. The meetings will start at 9 a.m. each day and conclude by 5 p.m.

ADDRESSES: The meeting location is the Salt Lake Plaza Hotel at Temple Square, 122 West South Temple, Salt Lake City, UT 84101. (Telephone: 801–521–0130).

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209; *silvey.patricia@dol.gov* (internet e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: The Panel was created under section 11 of the Mine Improvement and New Emergency Response (MINER) Act of 2006 (Pub. L. 109–236). The purpose of the Panel is to provide independent scientific and engineering review and recommendations concerning the

utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining. By December 2007, the Panel must submit a report to the Secretaries of Labor and Health and Human Services, the Senate Committee on Health, Education, Labor and Pensions, and the House Committee on Education and the Workforce. The first meeting of the Panel was held in Washington, DC on January 9–10, 2007. The second meeting of the Panel was held in Coraopolis, PA on March 28–30, 2007.

The agenda for the third meeting will include:

(1) Belt air ventilation issues.

(2) Ground control/convergence issues surrounding two-entry development in western underground coal mines.

(3) MSHA Aracoma Alma Mine ι1 accident investigation report.

(4) Public input.

The panel will allocate time at the end of each day for presentations by members of the public. MSHA expects the amount of time allocated for public participation to be approximately one hour, but it may vary based on the interest expressed by the public. MSHA will also accept written submissions.

MSHA requests that persons planning to participate in the public input session of this meeting notify the Agency at least one week prior to the meeting date. There will be an opportunity for other persons, who have not made prior arrangements with MSHA and wish to speak, to register at the beginning of the meeting each day. Speakers should limit their presentations to five minutes, but may supplement oral remarks with written submissions. MSHA will incorporate written submissions into the official record, which includes a verbatim transcript, and make them available to the public. The Panel Chairman will moderate the public participation session, and panelists may ask the speakers questions.

The public may inspect the official record of the meetings at the MSHA address listed above under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, this information will be posted on the Agency's single source webpage titled ''The Technical Study Panel on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining Single Source Page.'' The Single Source page is located at *http://www.msha.gov/BeltAir/BeltAir.asp.*

Dated: April 27, 2007.

Robert M. Friend,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 07–2160 Filed 4–27–07; 3:12 pm]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before June 1, 2007 to be assured of consideration.

ADDRESSES: Send comments to Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on February 14, 2007 (72 FR 7088 and 7089). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Publication Order Form.

OMB number: 3095–0046.

Agency form number: NATF Form 36.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 600.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 100 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. The National Archives Trust Fund (NATF) Form 36 (9/05), Microfilm Publication Order Form, is used by customers/researchers for ordering a roll, rolls, or a microfiche of a microfilm publication.

Dated: April 26, 2007.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E7–8349 Filed 5–1–07; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on May 15–16, 2007, Commissioners' Conference Room O–1G16, 11555 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 15, 2007—8:30 a.m. until the conclusion of business.

Wednesday, May 16, 2007—8:30 a.m. until the conclusion of business.

The Subcommittee will hear from the NRR staff and the Nuclear Energy Institute regarding the progress in resolving GSI–191, ''PWR Sump Performance.'' The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Zena Abdullahi (Telephone: 301–415–2808) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 25, 2007.

Cayetano Santos,

Branch Chief, ACRS.

[FR Doc. E7–8298 Filed 5–1–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year 2006 Agency Inventories Under the Federal Activities Inventory Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Agency Inventory of Activities That Are Not Inherently Governmental and of Activities That Are Inherently Governmental.

SUMMARY: The Federal Activities Inventory Reform (FAIR) Act, Public Law 105–270, requires agencies to develop inventories each year of activities performed by their employees that are not inherently governmental—i.e., inventories of commercial activities. The FAIR Act further requires OMB to review the inventories in consultation with the agencies and publish a notice of public availability in the **Federal Register** after the consultation process is completed. In accordance with the FAIR Act, OMB is publishing this notice to announce the availability of inventories from the agencies listed below. These inventories identify both commercial activities and activities that are inherently governmental.

This is the first release of the FAIR Act inventories for FY 2006. Interested parties who disagree with the agency's initial judgment may challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days and, if not satisfied with this review, may appeal to a higher level within the agency.

The Office of Federal Procurement Policy has made available a FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/omb/procurement/fair-index.html*. This User's Guide will help interested parties review FY 2006 FAIR Act inventories.

Rob Portman,

Director, Office of Management and Budget.

Attachment

FIRST FAIR ACT RELEASE FY 2006

American Battle Monuments Commission	Mr. Guy Giancarlo, (703) 696–6898, *http://www.abmc.gov/other/fair.htm*
Broadcasting Board of Governors	Ms. Cathy Brown, (202) 203–4608, *http://www.bbg.gov*
Consumer Product Safety Commission	Mr. Edward Quist, (301) 504–7655, *http://www.cpsc.gov*
Department of Commerce	Mrs. Maile Arthur, (202) 482–1574, *http://www.doc.gov*
Department of Defense	Ms. Monica Kelliher-Hamby, (703) 602–3666, *http://web.lmi.org/fairnet*
Department of Defense (IG)	Mr. Stephen D. Wilson, (703) 604–8306, *http://www.dodig.mil*
Department of Education	Mr. Gary Weaver, (202) 245–6138, *http://www.ed.gov/about/offices/list/ocfo/2006fair.html*
Department of Energy	Mr. Dennis O'Brien, (202) 586–1690, *http://www.mbe.doe.gov/me2–1/a76/csa76.htm*
Department of Health and Human Services	Ms. Tracey Mock, (202) 205–4430, *http://www.hhs.gov/ogam/oam/fair*
Department of Housing and Urban Development	Mr. Frank Murphy, (202) 708–0614 ext 3466, *http://www.hud.gov/offices/cfo*
Department of the Interior	Ms. Donna Kalvels, (202) 219–0727, *http://www.doi.gov/perfmgt/competitivesourcing*
Department of the Interior (IG)	Mr. Roy Kime, (202) 208–6232, *http://www.oig.doi.gov*
Department of Justice	Mr. Larry Silvis, (202) 616–3754, *http://www.usdoj.gov/jmd/pe/preface.htm*
Department of Labor	Mr. Larry Clark, (202) 693–4020, *http://www.dol.gov/oasam/programs/boc/welcome2boc.htm*
Department of Labor (IG)	Mr. David LeDoux, (202) 693–5138, *http://www.oig.dol.gov/2006fair—act.htm*
Department of Transportation	Mr. David Litman, (202) 366–4263, *http://www.dot.gov*
Department of Transportation (IG)	Ms. Jacquelyn Weber, (202) 366–1495, *http://www.oig.dot.gov*
Department of Treasury	Mr. Jim Sullivan, (202) 622–9395, *http://www.treas.gov/fair*
Environmental Protection Agency	Mrs. Barbara Stearrett (202) 566–1970, *http://www.epa.gov*
Environmental Protection Agency (IG)	Mr. Michael J. Binder (202) 566–2617, *http://www.epa.gov/oig*
Farm Credit Administration	Mr. Philip Shebest, (703) 883–4246, *http://www.fca.gov*
Federal Energy Regulatory Commission	Ms. Kimberly Fernandez, (202) 502–8302, *http://www.ferc.gov*
Federal Mediation and Conciliation Service	Mr. Dan Ellerman, (202) 606–5460, *http://www.fmcs.gov/internet*
Federal Trade Commission	Ms. Darlene Cossette, (202) 326–3255, *http://www.ftc.gov/fairact*
Inter-American Foundation	Ms. Linda Kolko, (703) 306–4308, *http://www.iaf.gov*
National Aeronautics and Space Administration	Ms. Diane Frazier, (202) 358–0419, competitivesourcing.nasa.gov
National Archives and Records Administration	Ms. Susan Ashtianie, (301) 837–1490, *http://www.archives.gov/ about/plans-reports/fair-act/index.html*
National Endowment for the Arts	Mr. Laurence Baden, (202) 682–5534, *http://www.arts.gov*
National Labor Relations Board	Ms. Demetria Gregory, (202) 273–0054, *http://www.nlrb.gov/about—us/public—notices/federal—activities—inventory—reform—act.aspx*

FIRST FAIR ACT RELEASE FY 2006—Continued

National Labor Relations Board (IG)	Mr. Emil George, (202) 273–1966, *http://www.nlrb.gov/about—us/public—notices/ federal—activities—inventory—reform—act.aspx*
National Science Foundation	Mr. Joseph Burt, (703) 292–8108, *http://www.nsf.gov/publications*
Occupational Safety and Health Review Commission	Mr. Richard Loeb, (202) 606–5376, *http://www.oshrc.gov*
Office of Federal Housing Enterprise Oversight	Ms. Jill Weide, (202) 414–3813, *http://www.ofheo.gov*
Peace Corps	Mr. Alfred Miller Jr., (202) 692–1126, *http://www.peacecorps.gov/index.cfm?shell=pchq.policies.docs*
Railroad Retirement Board	Mr. Henry Valiulis, (312) 751–4990, *http://www.rrb.gov*
Securities and Exchange Commission	Mr. Jeffrey Risinger, (202) 551–7446, *http://www.sec.gov*
Selective Service System	Mr. Calvin Montgomery, (703) 605–4038, *http://www.sss.gov*
Small Business Administration	Mr. Richard Brechbiel, (202) 205–6784, *http://www.sba.gov/A76*
Social Security Administration	Mr. Dennis Wilhite, (410) 965–7401, *http://www.socialsecurity.gov/fair/FAIRact.htm*
U.S. Agency for International Development	Ms. Deborah Lewis, (202) 712–0936, *http://www.usaid.gov/business/regulations/fair/*
U.S. Agency for International Development (IG)	Mr. Robert Ross, (202) 712–1331, *http://www.usaid.gov/oig/public/public1.htm*

[FR Doc. E7–8329 Filed 5–1–07; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27804; 812–13255]

Hill Physicians Medical Group, Inc.; Notice of Application

April 26, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTIONS: Notice of application for an order under section 3(b)(2), or, alternatively, under section 6(c) of the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Hill Physicians Medical Group, Inc. (''Hill Physicians'').

Summary of Application: Applicant seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities or, alternatively, under section 6(c) of the Act granting it an exemption from all provisions of the Act and the rules and regulations thereunder. Applicant is in the business of providing or arranging to provide physician services in Northern California to individual enrollee members of various health plans, including health maintenance organizations (''HMOs'') and other third party payors (collectively, ''Health Plans'').

DATES: *Filing Dates:* The application was filed on January 18, 2006, and amended on January 29, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 21, 2007, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090. Applicant, c/o Paul A. Stewart, Esq., Foley and Lardner LLP, One Maritime Plaza, 6th Floor, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811, or Janet M. Grossnickle, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC, 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. Formed in 1983, Hill Physicians is a physician's independent practice association organized as a California for-profit private professional medical corporation. Applicant represents that its shares can only be held by medical Providers (as defined below) and that the shares confer procedural rights to the Providers that hold them, not economic rights.[1] There is no trading market for Hill Physicians' stock. The non-transferable shares may only be sold to and redeemed by Hill Physicians at a price not to exceed the original issuance price of the share. Applicant further states that no dividends have ever been paid on its shares and none are expected to be paid.

2. Hill Physicians provides or arranges to provide physician services through California licensed practicing physicians (''Providers'') to members of Health Plans in northern California. Applicant states that these services are provided pursuant to a written contract with each Health Plan. Under each contract, Hill Physicians is obligated to provide the covered physician services that individual enrollee members of a Health Plan may later need. Hill Physicians is paid by the Health Plans on a fixed fee or ''capitated'' basis, meaning that Hill Physicians is paid monthly in advance a flat per member fee for each Health Plan member assigned to Hill Physicians. The capitation rates are set in advance, typically for two-year periods, and the payment covers all physician and certain ancillary services that any or all of the Health Plan members may need. The Providers, each of whom has signed substantially identical independent contractor agreements with Hill Physicians, provide the services at their individual offices. The Providers then send bills for payment to Hill Physicians, rather than the Health Plans. Hill Physicians pays the Providers mostly on a fee for service, not capitated, basis, as and when Provider bills are submitted to it.

3. This payment structure means that Hill Physicians bears the economic risk

[1] Hill Physicians only has one class of stock. Each shareholder Provider may hold only one share of Hill Physicians' stock.

that its payments to Providers for medical services will exceed the fixed amounts it receives from the Health Plans. Applicant states that it maintains a substantial amount of invested reserves, including investment securities, to manage this risk. Applicant further states that the accumulation of cash and investments is an inherent part of its business structure because of the regularity of the capitation payments it receives and the delayed and uncertain amount of the payments it makes to Providers. Applicant also represents that it maintains its investment portfolio to meet California regulatory requirements.

4. Applicant states that it is registered with, and subject to regulatory oversight by, the Medical Board of California. Applicant states that it is a ''risk bearing organization'' within the meaning of the California Health and Safety Code and it is subject to regulation of its solvency by California's Department of Managed Healthcare. Applicant also states that it is required by law, regulation and governmental policy to maintain positive levels of working capital and tangible net equity.

Applicant's Legal Analysis

1. Section 3(a)(1)(A) of the Act defines the term ''investment company'' to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Act further defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Applicant states that it has not held itself out as being engaged primarily in the business of investing, reinvesting or trading in securities within the meaning of section 3(a)(1)(A) of the Act. Applicant states that it would fall within the definition of investment company under section 3(a)(1)(C) of the Act because more than 40 percent of its total assets consist of investment securities as defined in section 3(a)(2) of the Act.

2. Rule 3a–1 under the Act provides an exemption from the definition of investment company if no more than 45 percent of a company's total assets consist of, and not more than 45 percent of its net income over the last four quarters is derived from, securities other than Government securities and securities of majority-owned subsidiaries and companies primarily controlled by it. Applicant states that it has not been able to rely on rule 3a-1 because its securities comprise a large percentage of its total assets.

3. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C), the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. Applicant requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an investment company as defined in the Act. In determining whether an issuer is ''primarily engaged'' in a non-investment company business under section 3(b)(2), the Commission considers the following factors: (a) The company's historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets (the ''Asset Factor''), and (e) the sources of its present income (the ''Income Factor'').[2]

4. Recently, the Commission set forth its belief that it is appropriate for HMOs to determine whether they are primarily engaged in a non-investment business for purposes of section 3(b)(2) without considering the Asset Factor provided that they met certain conditions.[3] Generally, the Commission indicated that the Asset Factor need not be considered by an HMO that (a) provides or arranges for the provision of health care services to subscribers or enrollees of the HMO; (b) is licensed under the laws of a state as a health care service plan, a health care service contractor, a health maintenance organization or a similar health plan company, and is subject to supervision by the insurance commissioner or a similar official; (c) allocates, manages and uses its investment securities in a manner consistent with its business as an HMO and in accordance with an investment policy adopted by its board of directors; and (d) bears a substantial amount of the risk that covered health care costs of the subscribers or enrollees of its health care products will differ from the prepaid or periodic charges paid by or on behalf of such persons (''underwriting risk''). In connection with the Income Factor, the Commission also clarified that an HMO may consider the sources of its present revenues so long as it derives substantially all of its total revenues from health care operations.

5. Applicant submits that it satisfies the criteria for the issuance of an order under section 3(b)(2) because the facts show that Hill Physicians is primarily engaged in providing physician and related health care services, and not in the business of investing, reinvesting, owning, holding or trading in securities.

a. Historical Development

Applicant states that it was formed in 1983 as an independent practice association for the express purpose of providing or arranging to provide physician services and that all of its activities since formation have been devoted to this purpose. Applicant also states that it intends to continue to be primarily engaged in the business of providing physician and related health care services.

b. Public Representations of Policy

Applicant states that all of the annual reports, internet postings, press releases and written communications it has issued have related to its business of providing physician services. Applicant also states that it has never held itself out as an investment company within the meaning of the Act and has never made any public representations that would indicate that it is in any business other than providing or arranging to provide physician services. Applicant represents that it has not issued any press release, advertising, promotional piece or other communication concerning its holdings of investment securities or its capital investment policies, or concerning any potential for profit or appreciation in value relating to its own shares.

c. Activities of Officers and Directors

Applicant represents that neither the directors nor the officers of Hill Physicians devote any significant part of their time to Hill Physicians' investment process. Applicant states that the members of its board of directors (''Board'') are all practicing physicians and were part of its physician network prior to serving on the Board. Applicant states that all of its directors and officers devote substantially all of their time spent on Hill Physicians matters on its business of providing or arranging to provide physician services. Applicant estimates that the Board and its executive committee spends

[2] Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

[3] PacifiCare of Arizona, Inc. et al., Investment Company Act Rel. Nos. 26643 (Oct. 25, 2004) (notice) and 26679 (Nov. 22, 2004) (order).

approximately 20% of its time on each of strategy, operations, membership and quality improvement, 15% of its time on education, technology and all other topics and 5% of its time on finance, including less than 1% on investment matters. The Board's involvement with respect to the investment portfolio consists of adopting an investment policy and reviewing periodic reports from its unaffiliated investment adviser and broker. Only three out of approximately 420 employees devote a *de minimis* amount of time to supporting Hill Physicians' investment process.[4]

d. Nature of Assets

Applicant states that it owns no fixed assets and has a relatively small asset base because it is a service organization whose workforce consists solely of independent contractor physicians working out of their own offices. Further, Applicant maintains a substantial amount of liquid assets, including investment securities, to: (a) Manage the risk that the aggregate capitated payments it receives from Health Plans will not adequately cover the actual amounts paid to Providers for services rendered; (b) ensure its ability to make timely payments during months when Hill Physicians' payment obligations to Providers for their services significantly exceed its month capitation revenue; (c) meet the statutory or regulatory requirements with respect to its cash-to-claims ratio, working capital and tangible net equity; and (d) cover its payment obligations to Providers and its operating expenses. Accordingly, Hill Physicians' cash, investment securities and accounts receivable comprised 83.2% of its total assets as of September 30, 2006, and it owned investment securities on that date representing approximately 65.9% of its total assets excluding Government securities and cash items. Applicant does not invest or trade in securities for speculative purposes.

e. Sources of Income

Applicant states that 49% of its total income for the four fiscal quarters ended September 30, 2006 combined was derived from investment securities. Applicant states that this percentage is much higher than historical levels because of a non-recurring investment gain transaction and the realization of accumulated gains when a new investment advisor adjusted the portfolio, selling most of the marketable securities. Hill Physicians anticipates that approximately 35% of its net income after taxes will be derived from investment securities in the future as it retains earnings for the purpose of providing operating capital and accumulates resources to strengthen infrastructure, *e.g.*, implementing electronic medical records and practice management systems in Providers' offices.

Applicant believes, however, that its sources of revenue are more representative of its activity as an operating company than its sources of income. Applicant states that income generation is not integral to its business because it, as an independent medical practice association, essentially acts as a ''cooperative'' for the benefit of the Providers. Applicant asserts that independent practice associations try to maximize the revenues they receive and fairly distribute them to the participating medical service providers. If Hill Physicians chooses not to retain earnings (and in years when it sustained operating losses), earnings from investment securities could represent all of its total income. Applicant states that revenues from the provision of physicians' services have always represented over 99 percent of its gross revenue, while revenues from investments constituted the remaining less than one percent. Applicant does not expect that the percentage of its total revenue derived from investment securities would ever represent other than an insignificant part of its total revenues.

6. As discussed more fully in the application, Applicant believes that it shares with HMOs the characteristics necessary to permit a determination of its primary business without regard to the nature of its assets. Hill Physicians provides or arranges to provide health care services to enrollees of Health Plans in return for capitation payments. While not licensed under state law as a health care service plan, health care service contractor, HMO or similar health plan company, Hill Physicians is subject to similar regulation by the California agency that regulates Health Plans and by the Medical Board of California. Hill Physicians allocates, manages and uses its investment securities in a manner consistent with its business of providing or arranging to provide physician services to members of Health Plans, and its Board has approved its investment policies. Applicant further argues that it meets the last condition because it bears the entire underwriting risk for payments to Providers, none of which is transferred to, or shared with, a third party under any contracts or other arrangements. Accordingly, Applicant submits that its primary business for purposes of section 3(b)(2) of the Act should be determined without considering the nature of its assets.

7. Applicant asserts that its sources of revenues, its historical development, its public representations of policy and the activities of its officers and directors, as discussed in the application, demonstrate that it is engaged primarily in a health care, and not in an investment, business, and thus satisfies the criteria for issuing an order under section 3(b)(2) of the Act.

8. In the alternative to exemptive relief under section 3(b)(2), Hill Physicians requests an order under section 6(c) of the Act exempting it from all provisions of the Act.[5] Applicant states that it has no public shareholders since it is privately held by its shareholder physicians and there is no trading market in its nontransferable shares. Applicant further states that there is no financial gain incentive associated with ownership of its shares. Furthermore, applicant believes that it is not the type of company the Act was designed to regulate and that compliance with the Act would be unnecessary, expensive and incompatible with its primary business of delivering health care. Consequently, Hill Physicians submits that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors, and is consistent with the purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

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BILLING CODE 8010–01–P

[4] Hill Physicians itself has no employees. Its management team and substantially all management services it requires are provided by a management company, PriMed Management Consulting Services, Inc. (''PriMed''). PriMed is compensated on the basis of cost plus incentives related to revenue growth, operating results and administrative efficiency and its compensation is not affected by the performance or value of Hill Physicians' investment securities. PriMed is owned by Hill Physicians, Catholic Healthcare West and the individuals who serve as Hill Physicians' chief executive officer and chief operating officer.

[5] Section 6(c) provides, in relevant part, that the Commission may issue a conditional or unconditional exemption from any provisions of the Act or rule thereunder if the exemption is ''necessary or appropriate in the public interest'' and is ''consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act].''

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27805; 812–13186]

HSBC Securities (USA) Inc.; Notice of Application

April 26, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 18(f)(1) of the Act.

APPLICANT: HSBC Securities (USA) Inc. (''HSBC Securities'').

SUMMARY OF APPLICATION: Applicant requests an order permitting registered open-end management investment companies to enter into secured loan transactions with commercial paper and medium-term note conduits administered by HSBC Securities.

DATES: *Filing Dates:* The application was filed on May 2, 2005 and amended on April 26, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 21, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090. Applicant, c/o Timothy P. Mohan, Esq., Chapman and Cutler LLP, 111 West Monroe Street, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Janet M. Grossnickle, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE, Washington, DC 20549–0102 (tel. 202–551–5850).

Applicant's Representations

1. HSBC Securities is an indirectly-held, wholly-owned subsidiary of HSBC Holdings plc (''HSBC Holdings''), one of the largest banking and financial services organizations in the world. HSBC Securities has substantial experience and expertise as an administrator of asset-backed commercial paper note programs. HSBC Securities has administered Bryant Park Funding LLC (''Bryant Park''), a commercial paper note program, since 2001 and has administered Abington Square Funding LLC (''Abington'') since 2006. As of February 28, 2007, this commercial paper program had assets of approximately $4.9 billion. HSBC Securities expects to administer additional asset-backed commercial paper and medium-term note programs established for additional limited purpose securitization entities to be formed in the future (such HSBC Securities administered conduits, collectively, along with Bryant Park and Abington, the ''Conduits''). Applicant states that several registered open-end investment companies have expressed interest in the type of loan facility described in the application.

2. Applicant requests relief to permit any registered open-end management investment company or series thereof that may participate from time to time as a borrower (''Borrowing Fund'') in loan facilities administered by HSBC Securities (''Loan Facilities''). The Conduits, which would be the principal source of financing for each Loan Facility, will issue commercial paper and, in certain cases, may issue medium-term notes (collectively, with the commercial paper, ''Promissory Notes'') and will use liquidity support provided by financial institutions that are ''banks'' within the meaning of section 2(a)(5) of the Act (''Liquidity Providers'') in connection with a Loan Facility. Each of Bryant Park and Abington is organized as a limited liability company under the laws of Delaware. Each Conduit, other than Bryant Park and Abington, will likely be organized as a corporation or limited liability company under the laws of Delaware. The Conduits will issue Promissory Notes to fund loans secured by receivables or other financial assets of the borrowers.

3. The Promissory Notes issued by the Conduits generally are sold to institutional investors that are ''accredited investors'' as defined in rule 501(a) of Regulation D under the Securities Act of 1933 (the ''Securities Act'') or ''qualified institutional buyers'' as defined in rule 144A under the Securities Act. HSBC Securities will negotiate the business arrangements on behalf of a Conduit, including loan amounts, interest rates, and fees. HSBC Securities will act as agent for the Conduits and the related Liquidity Providers under the agreements entered into with each Borrowing Fund and in such capacity will exercise rights and enforce remedies on behalf of the Conduit and Liquidity Providers. Personnel employed by HSBC Securities have substantially similar levels of experience and expertise as personnel that administer loans backed by financial assets made by HSBC Bank USA, National Association, which may act as a Liquidity Provider.

4. As security for a loan, Borrowing Funds will pledge assets (''Pledged Assets'') for the benefit of the Conduit and the Liquidity Providers. The Pledged Assets will meet eligibility criteria set by the Conduit and such criteria will be consistent with the Borrowing Fund's investment objectives and policies. For each loan transaction, HSBC Securities will evaluate: (a) The type and nature of a Borrowing Fund's Pledged Assets to determine whether they meet the Conduit's standards for collateral; (b) the operations and history of the Borrowing Fund; and (c) the financial position and operations of the Borrowing Fund's investment adviser.

5. Applicant states that a Conduit would make loans to a Borrowing Fund on an uncommitted basis and the related Liquidity Providers would, subject to the terms of the Loan Facility, be obligated to make loans to the Borrowing Fund in the event the Conduit was unable or unwilling to make such loans. The Conduit at any time and for any reason may (a) sell an outstanding loan to a Liquidity Provider, or (b) require a Liquidity Provider to provide financing to a Borrowing Fund instead of the Conduit. HSBC Securities states that these arrangements provide additional assurances to the holders of Promissory Notes that the Promissory Notes will be paid at maturity.

6. A Conduit purchases receivables and other assets from, and makes secured loans to, a broad range of sellers and borrowers in a variety of industries. Aggregate loans made by a Conduit to Borrowing Funds are not expected to be more than 20%, and usually would be considerably less than 20%, of the Conduit's outstanding loans and other assets.

7. HSBC Securities represents that the revolving credit and security agreement of a Loan Facility, which will be negotiated by the parties, will contain representations, warranties, covenants

and events of default that are customary for secured loan transactions involving open-end investment companies as well as such other terms that are specific to a particular Borrowing Fund and the conduct of its business. A Borrowing Fund will have the right to prepay its loans and terminate its participation in a Loan Facility upon prior notice at any time. The Pledged Assets of a Borrowing Fund will be available solely to secure repayment of the loans and other outstanding obligations of that Borrowing Fund under a Loan Facility. HSBC Securities further states that a Borrowing Fund would have the same rights and remedies under state and federal law with respect to a loan from a Conduit that it would have with respect to a comparable loan from a bank. HSBC Securities also states that the arrangements with the Liquidity Providers protect Borrowing Funds by providing an alternative source of financing in the event a Conduit is unable to continue lending funds.

8. No Borrowing Fund will participate in a Loan Facility unless it has represented, in writing, to HSBC Securities, the Conduit and the Liquidity Providers that: (a) Its policies permit borrowing and, if applicable, the use of leverage; (b) all borrowing transactions pursuant to the Loan Facility will be subject to the requirements of the Act, the rules and regulations thereunder, and any other applicable interpretations or guidance from the Commission or its staff; and (c) each borrowing transaction will be conducted in accordance with all applicable representations and conditions of the application. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's board of directors or trustees (''Board''), including a majority of the directors or trustees that are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''Disinterested Directors''), will determine that such participation is consistent with the Borrowing Fund's investment objectives and policies and in the best interests of the Borrowing Fund and its shareholders. Each Borrowing Fund's Board, including a majority of the Disinterested Directors, will also adopt procedures for evaluating and making certain determinations concerning the terms of each loan transaction between the Borrowing Fund and a Conduit.

9. HSBC Securities states that the proposed Loan Facilities would enable Borrowing Funds to borrow money from the Conduits at lower cost than obtaining comparable loans from a bank. HSBC Securities states that a Conduit's cost of funds is lower than that of banks, and this advantage will be passed on to the Borrowing Funds.[1]

Applicant's Legal Analysis

1. Section 18(f)(1) of the Act prohibits an open-end investment company from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300% for all borrowings of the company.[2] Section 2(a)(5) defines ''bank'' as a depository institution, a branch or agency of a foreign bank, a member bank of the Federal Reserve System, a banking institution or other trust company that, as a substantial portion of its business, receives deposits or exercises fiduciary powers similar to those permitted to national banks, or a receiver, conservator or liquidating agent of any of the foregoing. Applicant states that while a Conduit engages in many of the same business activities as banks, it is not a ''bank'' under this definition.

2. Section 6(c) of the Act permits the Commission to exempt any person or transaction or any class or classes of persons or transactions from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. HSBC Securities requests exemptive relief from section 18(f)(1) solely to the extent necessary to allow a Borrowing Fund to borrow from a Conduit that is not a bank. HSBC Securities believes that permitting the Borrowing Funds to borrow from a Conduit is fully consistent with the purposes and policies of section 18(f)(1) and would not implicate the concerns underlying that provision.

3. HSBC Securities states that section 18(f) of the Act reflects Congressional concern about excessive borrowing and the issuance of senior securities by open-end investment companies because these practices could unduly increase the speculative character and investment risk of junior securities. HSBC Securities notes that Borrowing Funds would remain subject to the 300% asset coverage requirement in section 18(f)(1) of the Act for all borrowings, including those from a Conduit. HSBC Securities further represents that Conduit loans will not impose any restrictions on a Borrowing Fund's shareholders that are different from those imposed by a collateralized bank loan. Finally, HSBC Securities argues that permitting a Borrowing Fund to borrow from a Conduit rather than a bank is expected to reduce its costs of borrowing, which should decrease the risk that a Borrowing Fund's borrowing costs will exceed the return from securities purchased with borrowed money and lessen any related incentive to purchase more speculative portfolio securities to cover those costs.

4. HSBC Securities states that section 18(f) of the Act also limited open-end investment companies to borrowing from traditional institutional lending sources out of a Congressional concern that public holders of senior securities might be unaware that they were much riskier instruments than senior securities issued by operating companies. Senior securities of investment companies typically were secured by assets that were subject to wide fluctuations in value. Further, common shareholders could redeem at any time, which also might affect an open-end investment company's ability to repay its outstanding debt.

5. HSBC Securities argues that the Loan Facilities do not involve the type of senior security holder that section 18(f)(1) of the Act was designed to protect and that the structure of the Loan Facilities and related Conduits provide sufficient protection to the parties that face any risk of loss by lending to an open-end investment company. A Conduit is or will be administered by HSBC Securities, which has extensive expertise in administering loans collateralized by financial instruments that equals or exceeds the expertise of most banks. The Liquidity Providers are banks as defined by the Act and thus not the type of senior security holder that Congress believed needed protection. HSBC Securities states that the Promissory Notes are general obligations of a Conduit and loans to Borrowing Funds are not expected to exceed 20% of a Conduit's assets and loans to any individual Borrowing Fund are not expected to exceed 10% of a Conduit's assets. Any risk of loss on the Promissory Notes posed by loans to open-end investment companies is further reduced by HSBC Securities' expertise, a Conduit's ability to sell the loans to the Liquidity Providers, and the Conduit-wide liquidity sources.

[1] The rate at which a Liquidity Provider would make a loan to a Borrowing Fund would not be as favorable as that of the Conduit, but would be comparable to the rates on secured lines of credit from banks. HSBC Securities anticipates that a Conduit, rather than a Liquidity Provider, will be the lender to the Borrowing Funds under a Loan Facility, absent extenuating circumstances.

[2] Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness.

6. Applicant states that section 18(f) also reflects a concern that complex capital structures may permit insiders to manipulate the allocation of expenses and profits; facilitate control of the investment company by junior security shareholders with little investment; and make it difficult for investors in the investment company to understand what their stock is worth. HSBC Securities states that borrowing from Conduits would not facilitate pyramiding of control or manipulative reallocation of expenses and profits. Further, HSBC Securities believes that borrowings from a conduit would not be any more difficult for shareholders of a Borrowing Fund to understand than bank borrowings.

7. Applicant also states that section 18(f) reflects a concern that existed when the Act was adopted that borrowings by open-end investment companies could be used to invest in securities without being subject to limitations of the Board of Governors of the Federal Reserve System (''FRB'') on the amount of credit that could be used for these purposes (''margin requirements''). Under Regulations U and T under the Securities Exchange Act of 1934, in effect prior to enactment of the Act, only borrowings for such purposes made by a domestic bank or broker-dealer were subject to margin requirements. HSBC Securities states that a Conduit would be subject to the same credit restrictions as a bank under Regulation U as currently in effect.

8. Finally, Applicant believes the requested relief will benefit Borrowing Funds by providing them with an alternative, lower-cost source of financing. For all of these reasons and in light of the protections afforded by the conditions set forth below, HSBC Securities believes that permitting Borrowing Funds to borrow from the Conduits would be in the best interests of the Borrowing Funds and their shareholders, appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant's Conditions

The Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. All Borrowing Funds will comply with the asset coverage requirements in section 18(f)(1) of the Act, including with respect to all borrowings from a Conduit.

2. A loan by a Conduit to a Borrowing Fund will be at an interest rate equal to the Conduit's cost of funds (*i.e.*, the weighted average Promissory Note rate plus dealer commissions).

3. Before a Borrowing Fund may participate in a Loan Facility, the Borrowing Fund's Board, including a majority of the Disinterested Directors, will determine that participation in the Loan Facility is consistent with the Borrowing Fund's investment objectives and policies and is in the best interests of the Borrowing Fund and its shareholders. In addition, a Borrowing Fund will disclose in its statement of additional information all material facts about its participation in the Loan Facility.

4. Before a Borrowing Fund may participate in a Loan Facility, its Board, including a majority of the Disinterested Directors, will adopt procedures governing the Borrowing Fund's participation in the Loan Facility (''Procedures''). In addition to any other provisions the Board may find necessary or appropriate to be included in the Procedures, the Procedures will require that, before a Borrowing Fund may enter into loan transactions with a Conduit, the Board, including a majority of the Disinterested Directors, will determine that:

a. The borrowing is in the best interests of the Borrowing Fund and its shareholders;

b. the borrowing and pledge of assets are consistent with the Borrowing Fund's investment objectives and policies;

c. the total anticipated cost of the Loan Facility (including fees and interest) does not exceed the total anticipated costs of comparable financing alternatives that are available to the Borrowing Fund;

d. the Borrowing Fund's asset eligibility criteria are consistent with its investment objectives and policies; and

e. each Borrowing Fund's investments, consistent with the eligibility criteria and any other requirements of participating in the Loan Facility, will be in the best interests of the Borrowing Fund and its shareholders.

5. If a Conduit determines (a) to require the Liquidity Providers to acquire from the Conduit outstanding loans made to a Borrowing Fund, or (b) not to extend additional loans to a Borrowing Fund, the Board of the Borrowing Fund, including a majority of the Disinterested Directors, will be notified promptly. As soon as practicable, the Board, including a majority of the Disinterested Directors, must determine whether it is in the best interests of the Borrowing Fund and its shareholders to continue to participate in the Loan Facility or to terminate the Borrowing Fund's participation in the Loan Facility in accordance with its terms.

6. At each regular quarterly meeting, the Board, including a majority of the Disinterested Directors, will (a) review a Borrowing Fund's loan transactions under a Loan Facility during the preceding quarter, including the terms of each transaction; and (b) determine whether the transactions were effected in compliance with the Procedures and the terms and conditions of the order. At least annually, the Board, including a majority of the Disinterested Directors, will (a) with respect to a Borrowing Fund's continued participation in a Loan Facility, make the determinations required in condition 3 above and (b) approve such changes to the Procedures as it deems necessary or appropriate.

7. A Borrowing Fund will maintain and preserve permanently in an easily accessible place a written copy of the Procedures and any modifications to the Procedures. The Borrowing Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction with a Loan Facility occurred, the first two years in an easily accessible place, a written record of each transaction setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan and all information upon which the determinations required by these conditions were made.

8. The Applicant will not enter into a Loan Facility with any Borrowing Fund if, at the time of such transaction, the Applicant, the Conduit or any Liquidity Provider is an affiliated person of a Borrowing Fund, within the meaning of section 2(a)(3) of the Act, or an affiliated person of an affiliated person of a Borrowing Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8364 Filed 5–1–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55671; File No. SR–Amex–2007–22]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Its Minor Rule Violation Fine Systems

April 26, 2007.

On February 21, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to incorporate violations of Amex Rule 131A—AEMI and Commentary .03 to Amex Rule 958—ANTE into Part 1 of its Minor Rule Violation Fine Systems (''Plan'').[3] On March 20, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on March 27, 2007.[4] The Commission received no comments regarding the proposal. The Commission is approving the proposed rule change, as modified by Amendment No. 1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] because a rule that is reasonably designed to encourage members to comply with Exchange rules should help the Exchange carry out its supervisory responsibilities and thereby help protect investors and the public interest.

The Commission further believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[7] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because the Plan provides procedural rights to a person fined for any violation of an Exchange rule that is determined to be minor in nature to contest the fine and permits disciplinary proceedings on the matter, the Commission believes that the Plan, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[8]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[9] which governs minor rule violation plans. The Commission believes that the proposed change to the Plan will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with Amex rules and all other rules subject to the imposition of fines under the Exchange's Plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Plan provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that Amex will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the Plan or whether a violation requires formal disciplinary action.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [10] and Rule 19d–1(c)(2) under the Act,[11] that the proposed rule change (SR–Amex–2007–22), as modified by Amendment No. 1, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8312 Filed 5–1–07; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amex Rule 590.

[4] *See* Securities Exchange Act Release No. 55500 (March 21, 2007), 72 FR 14314.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[8] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[9] 17 CFR 240.19d–1(c)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 240.19d–1(c)(2).

[12] *See* 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55668; File No. SR–NASDAQ–2007–030]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Extension of a Fee Pilot for National Quotation Data Service

April 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to re-establish retroactively from January 1, 2007 through December 31, 2007, a pilot program under Nasdaq Rule 7017(b), which reduced from $50 to $10 the monthly fee that non-professional users pay to receive National Quotation Data Service (''NQDS'').

The text of the proposed rule change is available at *http://nasdaq.complinet.com*, Nasdaq's principal office, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change. The text of these statements may be examined at the places specified in Item III 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 re-establish retroactively from January 1, 2007 through December 31, 2007, the fee reduction pilot program under Nasdaq Rule 7017(b) that reduced from $50 to $10 the monthly fee that non-professional users pay to receive NQDS.

NQDS delivers market maker quotations, Nasdaq Level 1 [3] service (including calculation and display of the inside market), and last sale information that is dynamically updated on a real-time basis. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms. Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professionals and non-professionals users alike. In August 2000, the NASD, through Nasdaq, filed a rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data. The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis.[4] On September 5, 2001, August 29, 2002, August 15, 2003, August 20, 2004, and January 24, 2006, the NASD, through Nasdaq, filed proposed rule changes to extend the pilot for additional one-year periods.[5] Nasdaq adopted the existing pilot program when it began operating as a national securities exchange in 2006, and is now proposing to extend the pilot of its own accord.

Nasdaq has consistently supported broad, effective dissemination of market information to public investors. Thus, Nasdaq is proposing to re-establish the fee-reduction pilot retroactively from January 1, 2007 through December 31, 2007. Nasdaq notes that the existing pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS for non-professional users demonstrates Nasdaq's continued commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, Nasdaq member firms often supply real-time market data to their customers through automated means. Thus, Nasdaq member firms' customers would benefit from the continued fee reduction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] 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. Nasdaq also believes that the fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions and encourages increased public participation in the securities markets.

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.

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. 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

<bullet≤ Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

<bullet≤ Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–030 on the subject line.

Paper Comments

<bullet≤ Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–030. 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. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2007–030 and should be submitted on or before May 23, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[8] In particular, the Commission believes that the proposal is consistent with Section 6(b)(4) of the Act,[9] which requires that the rules of an exchange provide an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The pilot lowers the monthly fee for non-professionals to receive NQDS from

[3] Pursuant to Nasdaq Rule 7011(b), Nasdaq separately distributes Level 1 data to non-professionals for a monthly fee of $1.00.

[4] *See* Securities Exchange Act Release No. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000).

[5] *See* Securities Exchange Act Release Nos. 44788 (September 13, 2001), 66 FR 48303 (September 19, 2001); 46446 (August 30, 2002), 67 FR 57260 (September 9, 2002); 48386 (August 21, 2003), 68 FR 51618 (August 27, 2003); 50318 (September 3, 2004), 69 FR 54821 (September 10, 2004); and 53531 (March 21, 2006); 71 FR 15506 (March 28, 2006).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

$50 to $10 a month. The Commission notes that the NQDS feature provides a mechanism to allow access to market data that is relevant to investors when they make financial decisions and that it does not unfairly discriminate between customers, issuers, brokers or dealers.

Accordingly, the Commission finds good cause for approving this proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[10]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NASDAQ–2007–030), be, and it hereby is, approved on an accelerated basis, as a pilot, scheduled to expire on December 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8310 Filed 5–1–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55672; File No. SR–NASDAQ–2007–029]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Require That Companies Submit Material News to Nasdaq Using Nasdaq's Electronic Disclosure System, Except in Emergency Situations

April 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2007, 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 substantially by Nasdaq. Nasdaq filed Amendment No. 1 to the proposed rule change on April 25, 2007. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Nasdaq Rule 4120, ''Trading Halts,'' and IM–4120–1, ''Disclosure of Material Information,'' to require Nasdaq-listed companies to submit material news to Nasdaq using Nasdaq's electronic disclosure submission system, except in emergency situations. To allow Nasdaq sufficient time to communicate with listed companies about the new requirement, Nasdaq will not implement the proposed rule change until approximately 90 days after the proposal is approved. Nasdaq's communication with companies regarding this proposed change will provide notice of the implementation date. The text of the proposed rule change is available at Nasdaq, in the Commission's Public Reference Room, and at *http://www.nasdaq.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

Pursuant to Nasdaq Rules 4310(c)(16) and 4320(e)(14), a Nasdaq-listed company is required, except in unusual circumstances, to make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions. These rules also require that the company provide prior notice of certain disclosures to Nasdaq's MarketWatch Department (''MarketWatch'').

Current methods to provide prior notification to MarketWatch include electronic submission using Nasdaq's Electronic Disclosure submission service, fax, and phone. While the Electronic Disclosure submission service was introduced to companies in 2004, the majority of companies still rely primarily on fax submission to MarketWatch.[3] The material information from fax-delivered documents and telephonic notifications must be manually retyped into MarketWatch's database systems. Nasdaq notes that this uses staff time with no added regulatory benefit, introduces error risk, and results in a less robust audit trail. To reduce this administrative burden, Nasdaq has recently taken steps to make the Electronic Disclosure submission system more accessible to listed companies [4] and is now proposing to require that companies submit material news to Nasdaq using the Electronic Disclosure submission system, except in emergency situations.

Using the Electronic Disclosure submission system, company employees and representatives can transmit disclosures to Nasdaq using a secure, encrypted connection. Upon receipt, Nasdaq reviews these disclosures to determine if a trading halt is appropriate. If Nasdaq believes that a halt may be appropriate, Nasdaq will confirm all disclosures with a company source before taking any action. Nasdaq does not disseminate any information received over the Electronic Disclosure submission system.

Companies would still be required to notify Nasdaq before disseminating material news, even if an emergency situation prevented them from accessing the Electronic Disclosure submission system. Nasdaq would accept notification by phone or fax in these situations. Examples of the types of situations where Nasdaq believes this could occur include: Lack of computer or internet access; a technical problem on either the issuer or Nasdaq system, or an incompatibility between those systems; and a material development such that no draft disclosure document exists, but immediate notification to MarketWatch is important based on the event.

Nasdaq believes that companies should be familiar with electronic submission of documents, given that most reports to the Commission must be

[10] 15 U.S.C. 78s(b)(2).

[11] *See id.*

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq notes, for example, that of approximately 4,200 material news notifications submitted to MarketWatch in January 2007, over 70% were submitted by fax.

[4] According to Nasdaq, although the system was previously on a portion of the Nasdaq Online issuer Web site that offered limited access, it now resides on an area of Nasdaq Online that can be more easily and directly accessed by companies and their representatives.

submitted electronically over the Commission's EDGAR system. Furthermore, the Electronic Disclosure submission system has been designed to be simple to operate. As such, Nasdaq does not believe that the required use of the Electronic Disclosure submission system will be a burden on companies.

If a company repeatedly fails to either notify Nasdaq prior to the distribution of material news, or to use the electronic disclosure submission system when Nasdaq finds no emergency situation existed, Nasdaq may issue a Staff Determination, pursuant to the Nasdaq Rule 4800 Series,[5] that is a public reprimand letter or, in extreme situations, a Staff Determination to delist the company's securities. In determining whether to issue a public reprimand letter, Nasdaq will consider whether the issuer has demonstrated a pattern of failures, whether the issuer has been contacted concerning previous violations, and whether the issuer has taken steps to assure that future violations will not occur.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular. Nasdaq believes that the proposed rule change would enhance its ability to timely review issuer disclosures, thereby facilitating the operation of a free and open market and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Nasdaq consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

<bullet≤ Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml;* or

<bullet≤ Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NASDAQ–2007–029 on the subject line.

Paper Comments

<bullet≤ Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–NASDAQ–2007–029. 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 at *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. Copies of the 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 No. SR–NASDAQ–2007–029 and should be submitted on or before May 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8313 Filed 5–1–07; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Amendment No. 1.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55670; File No. SR–NYSE–2007–41)

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Securities Manager Examination (''Series 12'')

April 25, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange 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 pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposal to eliminate the Securities Manager qualification examination (''Series 12'').

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

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 this filing is to rescind the Series 12 examination. The Series 12 is owned and maintained by the NYSE and administered through the National Association of Securities Dealers, Inc.

Background. NYSE Rule 342 (''Offices—Approval, Supervision and Control'') requires that member organizations be appropriately supervised. NYSE Rule 342.13 prescribes specific qualification standards for supervisors.[5] It requires that a Branch Office Manager (''BOM'') pass the General Securities Sales Supervisor examination (''Series 9/10'') or another examination acceptable to the Exchange. The Exchange currently accepts two alternatives to the Series 9/10 examination: The Series 12 examination and the General Securities Principal (''Series 24'') examination.[6]

Since the Series 12 examination qualifies a candidate as a Securities Manager, it has generally been utilized by individuals employed by a broker/dealer whose business is limited solely to equity and non-municipal fixed income securities.

Proposed Amendment. The Exchange is seeking to rescind the Series 12 examination [7] primarily because its content is now covered by the Series 10 examination, which is the general securities portion of the Series 9/10 examination. The Series 12 consists of 100 multiple-choice questions covering the following four general areas of knowledge, which are also addressed in the Series 10: Sales Supervision; Account Supervision; Compliance, Recordkeeping and Financial Responsibility; and Regulations Affecting the Operation of Securities Markets. The primary difference between the Series 12 and the Series 10 is that the Series 12 does not cover municipal securities. Thus, candidates seeking a BOM and/or Securities Manager designation may qualify via the Series 10 examination (or the Series 24 examination) in lieu of the Series 12.

Further, few candidates take the Series 12, and the number of candidates taking the exam annually has declined steadily over the past several years. For example, in 2000, 70 candidates took the Series 12. By 2003, only 20 candidates took the Series 12, and only 15 candidates took the exam in 2006. Maintenance of an examination program is a labor-intensive process because an exam must be reviewed and updated regardless of the number of candidates taking the exam. Rescission of the Series 12 will enable the Exchange to better allocate its resources to updating and administering the Series 10 examination.

In order to notify candidates who are currently registering or preparing for the Series 12 examination, the Exchange published an Information Memo announcing the Exchange's intention to file this proposed rescission with the Commission.[8] In brief, it informed candidates who requested to take the Series 12 prior to April 23, 2007 that they will be registered to do so.[9] If, however, a candidate requests registration for the Series 12 on or after that date, the candidate will automatically be registered to take the Series 10 examination.

2. Statutory Basis

The Exchange believes that the proposed rescission is consistent with the requirements of Section 6(c)(3)(B) [10] of the Act. The Exchange believes, pursuant to that section, it has a responsibility to prescribe standards of training, experience, and competence for persons associated with Exchange member organizations. The Exchange notes that proposed rescission of the Series 12 will not result in any diminution of Exchange competency standards because the content of the Series 12 is covered by the Series 10 examination, and the Exchange prospectively will require all candidates who would have otherwise taken the Series 12 to take the Series 10.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(i) [11] of the Act and paragraph (f)(1) of Rule 19b–4 thereunder,[12] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[5] *See* also NYSE Rule 345 (''Employees—Registration, Approval, Records''), which requires supervisors of registered representatives to be registered. In addition, NYSE Rule 345.15 requires candidates for registration to meet training requirements and pass a qualification examination.

[6] The Series 24 examination is only recognized by the Exchange if taken and passed on or after July 2, 2001. Further, unlike the Series 9/10 examination, which qualifies a person to supervise options and municipal business as well as equities business, the Series 24 examination only qualifies a person to supervise equities business. A BOM may qualify to supervise options and municipal securities business by passing the Registered Options Principal examination (''Series 4'') and the Municipal Securities Principal examination (''Series 53''), respectively. *See also* NYSE Information Memo 02–51 (November 12, 2002).

[7] When originally introduced in 1964, the Series 12 was the standard BOM examination. The BOM examination was administered in this form until April 1984 when it was changed to the General Securities Sales Supervisor examination (''Series 8''), which was created from the Series 12, Series 24, Series 4 and Series 53 examinations. The two-part Series 8 examination later split into the Series 9/10 with the Web CRD conversion in August 1999. *See also* NYSE Information Memo 81–57 (December 1, 1981), which announced the approval of the Series 8 examination.

[8] *See* NYSE Information Memo 07–32 (April 11, 2007).

[9] Individuals wishing to take the Series 12 examination were instructed to make the appropriate request through the Central Registration Depository on or before Friday, April 20, 2007. Individuals who made an appropriate request by April 20, 2007 have 120 days to take the Series 12 examination. NYSE will also continue to grant Securities Manager qualification to individuals who have passed the Series 24 on or after July 2, 2001, except for those individuals who supervise options or municipal securities sales activity. *See* NYSE Information Memo 02–51 (November 12, 2002).

[10] 15 U.S.C. 78f(c)(3)(B).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

Electronic Comments

<bullet≤ Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

<bullet≤ Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–41 on the subject line.

Paper Comments

<bullet≤ Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–41. 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. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–41 and should be submitted on or before May 23, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–8311 Filed 5–1–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Disaster Declaration ●10852 and ●10853; New York Disaster ●NY–00045

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of New York (FEMA–1692–DR), dated 04/24/2007.

Incident: Severe Storms and Inland and Coastal Flooding.

Incident Period: 04/14/2007 through 04/18/2007.

Effective Date: 04/24/2007.

Physical Loan Application Deadline Date: 06/25/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/24/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Orange, Rockland, Westchester.

Contiguous Counties (Economic Injury Loans Only):

New York: Bronx, Dutchess, Putnam, Sullivan, Ulster.

Connecticut: Fairfield.

New Jersey: Bergen, Passaic, Sussex.

Pennsylvania: Pike.

The Interest Rates are:

	Percent
For Physical Damage:.	
Homeowners with Credit Available Elsewhere:	5.750
Homeowners without Credit Available Elsewhere:	2.875
Businesses with Credit Available Elsewhere:	8.000
Other (Including Non-Profit Organizations) with Credit Available Elsewhere:	5.250
Businesses and Non-Profit Organizations without Credit Available Elsewhere:	4.000
For Economic Injury:.	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 108526 and for economic injury is 108530.

Federal Domestic Assistance Numbers 59002 and 59008)

Jane M. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E7–8348 Filed 5–1–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Diego, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared to identify a corridor for a future proposed highway and port of entry in San Diego County, California.

FOR FURTHER INFORMATION CONTACT: Steve Healow, Project Development Engineer, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, California 95814. Telephone: (916) 498–5849 or Susanne Glasgow, Deputy District Director, Environmental Division, California Department of Transportation, District 11, 4050 Taylor Street, MS–242, San Diego, CA 92110. Telephone: (619) 688–0100.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) and the General Services Administration (GSA), will prepare a phased environmental impact statement (PEIS) on a proposal to identify and preserve a corridor for future State Route (SR) 11, identify an area for the future Otay Mesa East Port of Entry (POE), and study the functionality of the existing Commercial Vehicle Enforcement Facility (CVEF) on eastern Otay Mesa in San Diego County. Identification and preservation of the highway corridor and port of entry will facilitate the application process for presidential permit for the POE, land use planning by local jurisdictions, and right-of-way acquisition for the future projects.

Future SR11 would begin at approximately the SR905/SR125 interchange and proceed easterly approximately 2.7 miles to a new POE. The completed PEIS will facilitate Caltrans, FHWA, and GSA proceeding independently with right-of-way acquisition, designation, and project level environmental processing of their

respective projects. Within the limits of and adjacent to the study area, there are biological resources, cultural resources, agricultural lands, cross-border concerns, and potential growth issues.

In addition to the no action alternative, there are alternatives for two proposed corridors to two POE locations under consideration.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public scoping meeting will be held at an appropriate location in or near Otay Mesa in June 2007. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft PEIS will be available for public and agency review prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the PEIS should be directed to FHWA and/or Caltrans at the addresses provided above. The views of the agencies having knowledge about the historic resources potentially affected by the proposal or interested in the effects of the project on historic properties are solicited.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of federal programs and activities apply to this program.)

Issued on: April 23, 2007.

Steve Healow,

Project Development Engineer, Federal Highway Administration, Sacramento, California.

[FR Doc. E7–8444 Filed 5–1–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: May 21, 2007, 11 a.m. to 2 p.m., Eastern Daylight Time.

PLACE: This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827–4565 to receive the toll free number and pass code needed to participate in this meeting by telephone.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Dated: April 25, 2007.

William A. Quade,

Acting Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 07–2181 Filed 4–30–07; 12:49 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Limitation on Claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for public transportation projects in the following metropolitan areas: Eugene, Oregon; Fort Myers, Florida; Houston, Texas; and New York, New York. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Title 23, United States Code (U.S.C.), section139(l). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Joseph Ossi, Environmental Protection Specialist, Office of Planning and Environment, 202–366–1613, or Christopher Van Wyk, Office of Chief Counsel, 202–366–1733. FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA), and in other documents in the FTA administrative record for the project. The final agency environmental decision documents—Records of Decision (ROD) or Findings of No Significant Impact (FONSI)—for the listed projects are available online at *http://www.fta.dot.gov/planning/environment/planning—environment—documents.html* or may be obtained by contacting the FTA Regional Office for the metropolitan area where the project is located. Contact information for the FTA Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, the National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q].

The projects and actions that are the subject of this notice are:

1. *Project name and location:* Bus Rapid Transit System Improvements for the Pioneer Parkway Corridor; Eugene, Oregon. *Project sponsor:* Lane Transit District (LTD). *Project description:* The Pioneer Parkway bus rapid transit (BRT) project consists of construction of 5.2 miles of exclusive transit lanes and 14 transit stations. The southern part of the project alignment would follow Pioneer Parkway, utilizing portions of an abandoned railroad right-of-way. The existing pedestrian and bicycle path in this corridor will be maintained. Along the northern loop, a single lane will be located in the median of Martin Luther King Jr. Parkway. On RiverBend Drive and International Way, the BRT buses will operate in the median. On Gateway Street and Harlow Road, the BRT buses will operate in mixed traffic. *Final agency actions:* FONSI issued on December 22, 2006; Section 106 Finding of No Adverse Effect; project-level Air Quality Conformity determination. *Supporting documentation:* Environmental Assessment: Bus Rapid Transit System Improvements for the

Pioneer Parkway Corridor issued in September 2006.

2. *Project name and location:* LeeTran Transit Facility; Fort Myers, Florida. *Project sponsor:* Lee County Transit (LeeTran). *Project description:* The project is the construction of a new transit facility for LeeTran, which would house administrative functions, service operations, and bus maintenance functions and facilities. The facility would also accommodate passenger transfers and a customer service area. *Final agency actions:* FONSI issued on August 31, 2006; Section 106 Finding of No Historic Property Affected. *Supporting documentation:* Final Environmental Assessment: LeeTran Transit Facility, July 2006.

3. *Project name and location:* METRO Intermodal Terminal; Houston, Texas. *Project sponsor:* Metropolitan Transit Authority of Harris County (METRO). *Project description:* The project is the construction of a multimodal, multi-use, multi-story transit facility adjacent to the Near Northside neighborhood of downtown Houston. It will act as a major transit hub for the area, enabling transit riders to transfer easily between the different modes of transit. The facility will house passenger waiting and transfer facilities; bicycle storage facilities; and passenger and driver amenities, including parking, public restrooms, and retail space. *Final agency action:* FONSI issued on January 10, 2007; Section 4(f) finding; Section 106 Memorandum of Agreement. *Supporting documentation:* Final Environmental Assessment: Intermodal Terminal, December 2006.

4. *Project name and location:* North Corridor Fixed Guideway Transit Project; Houston, Texas. *Project name and sponsor:* Metropolitan Transit Authority of Harris County (METRO). *Project description:* The project is the construction of approximately 5.5 miles of fixed guideway transit consisting of: (1) An extension of the existing light rail transit (LRT) Red line from the University of Houston-Downtown Station to the new Burnett Station following the North Main Street right-of-way; and (2) from the Burnett Station, a new Bus Rapid Transit (BRT) line, proceeding north on North Main Street in mixed flow traffic for 0.3 mile and then entering an exclusive guideway in the middle of North Main Street. The BRT line will continue north in the North Main Street right-of-way to Boundary Street, where it will turn east and follow Boundary Street to Fulton Street. At Fulton Street, the BRT Line will turn north and proceed to Northline Mall. The project includes six at-grade transit stations and one elevated station at Burnett Street. *Final agency actions:* ROD issued on February 2, 2007; Section 4(f) finding; Section 106 Memorandum of Agreement; project-level Air Quality Conformity determination. *Supporting documentation:* North Corridor Fixed Guideway Project: Final Environmental Impact Statement issued on December 29, 2006.

5. *Project name and location:* Southeast Corridor Fixed Guideway Transit Project; Houston, Texas. *Project sponsor:* Metropolitan Transit Authority of Harris County (METRO). *Project description:* The project is the construction of a Bus Rapid Transit (BRT) line that will operate between downtown Houston and a terminus on Griggs Road at Beekman Road east of Martin Luther King Boulevard, a distance of approximately 6 miles. The BRT line will connect downtown Houston with the universities area including Texas Southern University and the University of Houston, and the Palm Center. The BRT service will operate in diamond lanes in downtown from Louisiana to Polk Street and in exclusive transit lanes on Scott Street, Wheeler Street, Martin Luther King Boulevard, and Griggs Road to the terminus at Beekman Road. The project includes 11 BRT stations. *Final agency actions:* ROD issued on February 6, 2007; Section 4(f) finding; Section 4(f) *de minimis* impact finding; Section 106 Memorandum of Agreement; project-level Air Quality Conformity determination. *Supporting documentation:* Southeast Corridor Fixed Guideway Project: Final Environmental Impact Statement issued on January 5, 2007.

6. *Project name and location:* World Trade Center Vehicular Security Center and Tour Bus Parking Facility; New York, New York. *Project name and sponsor:* Port Authority of New York and New Jersey. *Project description:* The World Trade Center (WTC) Vehicular Security Center and Tour Bus Parking Facility to be constructed at Ground Zero in Lower Manhattan will provide security precautions to protect new public investments at the WTC site. The project will also include a subsurface parking facility to serve tour buses bringing visitors to the memorial at the WTC site. The security center will provide off-street screening of buses, trucks, and automobiles entering the WTC site. The visible security location will lend a level of protection against threats to the WTC site. The project will also allow delivery truck access to subgrade loading areas for Towers 3, 4, and 5 on the WTC site. The project will be built on 4 levels. The entrance/exit will be located on the south side of Liberty Street between Route 9A and Greenwich Street. The roof of the facility will be at street-level and will be the base of the future Liberty Park and St. Nicholas Church. The security center will be located underground on the B1 level. Once vehicles have been properly screened, those that comply with security standards will be directed to a common ramp structure. The vehicles that do not meet the requirements of the security screen will be exited onto Liberty Street. Authorized trucks, buses, and automobiles will continue downward through the B2 level to the B3 level of the WTC site. The B3 level will include a consolidated loading area beneath Towers 3 and 4 as well as tour bus parking. The project will also include ancillary facilities and systems, such as employee spaces, mechanical rooms, emergency egress, and ventilation structures. *Final agency actions:* FONSI issued on January 26, 2007; Section 4(f) finding; Section 106 Memorandum of Agreement. *Supporting documentation:* Environmental Assessment: WTC Vehicular Security Center and Tour Bus Parking Facility, November 2006.

7. *Project name and location:* Long Island Rail Road East Side Access—50th Street Facility; New York, New York. Project sponsors: Metropolitan Transportation Authority, Long Island Rail Road (LIRR). *Project description:* The project is a new above-ground structure on East 50th Street housing the ventilation equipment, ventilation shafts and openings, emergency generators, and a loading dock for the LIRR East Side Access (ESA) project. The facility is a modification of the original design of the LIRR ESA project presented in its Final Environmental Impact Statement of March 16, 2001. A new building replacing the existing buildings at the project site will house the ventilation facility, loading docks, and freight elevators. The sub-basements below the new surface structure will connect to the new LIRR concourse and tunnels that are part of the ESA project. At street level, an area of open space and a through drive from 49th Street to 50th Street are included in the design. The project also includes, on an adjacent building, a cooling tower and a chase to house conduits and pipes. *Final agency actions:* FONSI issued on July 27, 2006; Section 106 Amended Programmatic Agreement. *Supporting documentation:* Revised Supplemental Environmental Assessment, LIRR East Side Access 50th Street Facility, April 2006.

Issued on: April 25, 2007.

Susan Borinsky,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. E7–8446 Filed 5–1–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 455X)]

BNSF Railway Company—Abandonment Exemption—in Stearns County, MN

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 0.79-mile line of railroad between milepost 16.21 and milepost 17.00, near Cold Spring, in Stearns County, MN. The line traverses United States Postal Service Zip Code 56320.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 6, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 17, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 [3] must be filed by May 29, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 11, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 7, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 26, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–8352 Filed 5–1–07; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[3] On November 27, 2006, the Minnesota Department of Transportation filed a request for trail use/rail banking and for a public use condition. These requests will be handled in a subsequent decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 287X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Brunswick County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 5.00-mile line of railroad between mileposts FD 90.20 and FD 95.20, in Lawrenceville, Brunswick County, VA. The line traverses United States Postal Service Zip Code 23868 and includes the former station of Lawrenceville.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 1, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent

Continued

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 14, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.58 must be filed by May 22, 2007, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by May 7, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use,[3] or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by May 2, 2008, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-State Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,300. *See* 49 CFR 1002.2(f)(25).

[3] According to NSR, the portion of the line between mileposts FD 90.20 and FD 92.40 will be reclassified as an industrial lead track and left in place for future industrial opportunities. Accordingly, that portion would not be available for public use.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 24, 2007.

Vernon A. Williams,

Secretary.

[FR Doc. E7–8255 Filed 5–1–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–XX (NOT–146367–06)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning Notice 2006–XX (NOT–146367–06), Guidance Regarding Heavy Hybrid Vehicles.

DATES: Written comments should be received on or before July 2, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Guidance Regarding Heavy Hybrid Vehicles.

OMB Number: 1545–2060.

Notice Number: Notice 2006–XX (NOT–146367–06).

Abstract: This notice sets forth a process that allows taxpayers who purchase medium-duty and heavy-duty hybrid vehicles to rely on domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic distributor's) certification that both a particular make, model, and year of vehicle qualifies as a qualified hybrid motor vehicle under § 30B(3) and (d), and the amount of the credit allowable with respect to the vehicle.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Responses: 12.

Estimated Time Per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 280.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 24, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–8388 Filed 5–1–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
May 2, 2007

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 3000, 3200, and 3280
Geothermal Resource Leasing and Geothermal Resources Unit Agreements; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3200, and 3280

[W0–310 9131 PP]

RIN 1004–AD86

Geothermal Resource Leasing and Geothermal Resources Unit Agreements

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the Bureau of Land Management's geothermal resources leasing and unit agreement regulations to implement the Energy Policy Act of 2005. The rule restructures regulations concerning the general geothermal leasing process and revises regulations on royalties and readjustment of lease terms, conditions, and rentals. The rule also revises regulations on lease duration and work commitment requirements, annual rental and credit of rental towards royalty, unit and communitization agreements, and acreage limitations. Additional revisions required by the Energy Policy Act include various technical corrections. Other changes in sections unaffected by changes in the statute clarify existing procedures, improve grammatical construction, conform the regulations to new administrative regulatory standards, and correct existing errors.

DATES: This rule is effective June 1, 2007.

ADDRESSES: Further information or questions regarding this final rule should be addressed in writing to the Director (WO–300), Bureau of Land Management, 1849 C St., NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Kermit Witherbee at (202) 452–0385 or Ian Senio at (202) 452–5049. Persons who use a telecommunications device for the deaf (TDD) may contact these persons through the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Final Rule and Responses to Comments on Proposed Rule
III. Procedural Matters

I. Background

On July 21, 2006, the Bureau of Land Management (BLM) published a proposed rule to amend existing geothermal resources leasing and unit agreement regulations (71 FR 41542). This final rule adopts most of the provisions of the proposed rule and in so doing implements the geothermal energy provisions of the Energy Policy Act of 2005 (Pub. L. 109–58) (Energy Policy Act), which became law on August 8, 2005. Sections 221 through 236 of this Act address geothermal development and substantially amend the Geothermal Steam Act of 1970. The Geothermal Steam Act of 1970, as amended, 30 U.S.C. 1001–1028, provides the authority for the BLM to allow for the exploration, development, and utilization of geothermal resources on BLM-managed public lands, as well as geothermal resources on lands managed by other surface management agencies, such as the United States Forest Service.

One of the more significant changes in the Energy Policy Act is the general requirement, with a few exceptions, for geothermal resources to be offered through a competitive leasing process. Lands not successfully sold in the competitive process can be leased noncompetitively.

The Energy Policy Act also made significant changes in the way royalties are assessed on Federal leases. As discussed in the preamble to the proposed rule (71 FR at 41543), these changes were similar to, and in some cases identical to, recommendations in a 2005 report from the Geothermal Valuation Subcommittee (Subcommittee) of the Minerals Management Service's (MMS) Royalty Policy Committee (RPC). To simplify the valuation methodology for royalty purposes, the Energy Policy Act requires a royalty based on the ''gross proceeds'' from the sale of electricity from Federal geothermal leases issued after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee does not elect to be subject to the royalty regulations required by the Energy Policy Act) multiplied by a royalty rate established by the BLM, rather than on the ''net back'' system that was used prior to the Energy Policy Act. Lessees who use geothermal resources directly will pay fees according to a fee schedule established by the MMS. Under the new law, existing lessees have the opportunity to convert the royalty provisions in their leases to those of the Energy Policy Act. The MMS is publishing a final rule to implement the changes in the Energy Policy Act simultaneously with BLM's final rule. The BLM and the MMS have worked together to coordinate their regulations.

References to the MMS regulations appear throughout the BLM's final rule because the BLM and the MMS share responsibility with regard to the geothermal program. The BLM holds lease sales, issues geothermal leases, and generally administers the leases. The BLM establishes the terms of the leases, including royalty rates, and enforces the lease terms. The MMS is responsible for collecting rents (other than the first year's rent) and royalties, and for enforcing the royalty obligations. The MMS regulations contain provisions that carry out its responsibilities. Appropriate cross-references are contained both in the BLM and the MMS regulations.

Other changes made by the Energy Policy Act include restructured lease terms (length of time a lease is in effect) and lease term extensions, and provisions for leases for exclusive direct use of geothermal resources, without sale, that may be issued noncompetitively. The Act also increases the maximum acreage of an individual lease and gives the Secretary of the Interior greater authority to require lessees to commit to unit agreements to conserve geothermal resources.

Most of the changes in the regulations of this part implement the new provisions of the Energy Policy Act. Other changes in sections unaffected by changes in the statute clarify existing procedures, improve grammatical construction, conform the regulations to new administrative or regulatory standards, and correct existing errors. Changes based on the Energy Policy Act and substantive changes unrelated to the change in statute were discussed in detail in the preamble to the proposed rule. Both the preamble to the proposed rule and this preamble set out the basis and purpose of this final rule. In this preamble, we explain how the final rule differs from the proposed rule and discuss comments received on the proposed rule and our responses. References in this preamble to the previous rule mean the rule that is currently codified in 43 CFR and not the proposed regulations.

II. Discussion of Final Rule and Responses to Comments on Proposed Rule

The BLM received nine comments on the proposed rule published in the **Federal Register** on July 21, 2006 (71 FR 41542). In this section of the preamble, we respond to the substantive comments by subpart and/or section number. To facilitate understanding, we have also generally included a brief summary of what the subpart or section

provides. For additional explanation of the changes made to each section, please refer to the proposed rule at 71 FR 41543–41565.

Many of the comments received addressed both the BLM proposed rule and the MMS proposed rule. The BLM referred to the MMS any comments it received regarding the MMS rule. For responses to those comments, please see the MMS final rule being published simultaneously with this final rule.

Subpart 3200—Geothermal Resources Leasing

In subpart 3200, we changed the definitions section and added three sections to the end of the subpart.

Definitions

Section 3200.1 contains definitions of terms used throughout parts 3200 and 3280. As explained in the proposed rule, we removed the definitions of terms and concepts that are no longer used or were not used previously, added new definitions for terms or concepts that are new in this rule, and clarified other terms. The definitions we deleted were: ''additional term,'' ''cooperative agreement,'' ''extended term,'' and ''pay instead of produce in commercial quantities.'' The new terms defined are: ''initial extension,'' ''additional extension,'' ''direct use,'' ''direct use lease,'' ''gross proceeds,'' ''commercial production or generation of electricity,'' and ''commercial production.'' Terms clarified are: ''geothermal exploration permit'' and ''geothermal steam and associated geothermal resources.''

In this final rule, we revise the definition of ''commercial production or generation of electricity,'' by adding language to clarify that the term includes electricity or energy that is required to produce the resource, as well as that required to convert the resource into electrical energy for sale. This was the BLM's intent in the proposed rule. We also specify that the use of resources in this manner must be reasonable in order to discourage waste of the resource and to conform to the parallel MMS provision at 30 CFR 202.351(b)(2)(ii). As explained in the preamble to the proposed rule (71 FR 41543), the definition of this term is important in determining whether geothermal resource production is subject to royalties or direct use fees, as referenced in 30 U.S.C. 1004(b), or neither. The BLM believes it is more appropriate to consider these components as part of the electrical generation process, both: (1) To encourage the production of geothermal resources (by not imposing a fee for a necessary cost of electricity generation); and (2) Because measurement of such usage would be difficult and expensive and the amount of moneys generated through the collection of fees would be quite small relative to the measurement effort. The BLM expects that an initial evaluation will occur at the permitting stage of whether the amount of the electricity used to produce the resource and to convert the resource into electricity is likely to be reasonable.

In reviewing subpart 3205 of the proposed rule (Direct Use Leasing), we concluded that, in accordance with the statutory provisions at 30 U.S.C. 1003(f), the definition of a ''direct use lease'' should include that such a lease is issued noncompetitively. Section 3205.6 of the proposed (and final) rule provides, mirroring the statute, that the BLM may issue a direct use lease only if, among other things, it ''determines there is no competitive interest in the resource * * *.'' If the BLM determines that land for which an applicant applied for a direct use lease is open for geothermal leasing and is appropriate for exclusive direct use operations (see definition of ''direct use''), and that there is competitive interest, it will include the land in a competitive lease sale with lease stipulations limiting operations to exclusive direct use. Unlike a direct use lease that is issued noncompetitively, under a competitive lease that is limited to exclusive direct use, the resource may be sold (but it may not used by the operator or a purchaser for the commercial generation of electricity), and the acreage restrictions will be those applicable to competitive leases rather than direct use leases. We have thus revised the definition of ''direct use lease'' to read as follows: ''*Direct use lease* means a lease issued noncompetitively in an area BLM designates as available exclusively for direct use of geothermal resources, without sale, for purposes other than commercial generation of electricity.''

We received no comments on this section and, except for revising the definition of ''direct use lease'' as discussed above, have adopted it as proposed.

Types of Leases

Final section 3200.6 provides general information about the two types of geothermal leases that are issued under this rule: (1) Leases that may be used for any type of geothermal use, such as commercial generation of electricity or direct use of the resource, issued either competitively under subpart 3203 or noncompetitively under subpart 3204; and (2) Leases that may only be used for direct use without sale, i.e., direct use leases issued under proposed subpart 3205. We received no comments on this section and have adopted it as proposed. We discuss permitted uses under different types of leases in more detail in the discussion of subpart 3205 (Direct Use Leasing), below.

Transition Rules

The Energy Policy Act at 30 U.S.C. 1005(d), directed that the Secretary by regulation establish transition rules for leases issued before August 8, 2005. The only transition requirement in that section was that leases nearing the end of their terms on August 8, 2005, must be allowed 2-year extensions under certain circumstances.

Under the authority of 30 U.S.C. 1005(d), final sections 3200.7 and 3200.8 contain transition rules, addressing how this final rule applies to: (1) Leases issued before August 8, 2005, the enactment date of the Energy Policy Act; and (2) Leases issued on or after August 8, 2005, but based on lease applications pending on August 8, 2005.

Final section 3200.7(a)(1) makes leases issued before August 8, 2005, generally subject to parts 3200 and 3280, except they are subject to the regulations in effect on August 8, 2005 (43 CFR parts 3200 and 3280 (2004)), with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals. Final section 3200.7(a)(1) and 3200.8(a) include a citation to 43 CFR parts 3200 and 3280 (2004) to clarify that these were the regulations in effect on August 8, 2005. The substance of the 2004 edition of 43 CFR parts 3200 and 3280 is the same as the 2005 and 2006 editions of the CFR for those parts.

Final section 3200.7(a)(2) provides that the lessee of a lease issued before August 8, 2005, may elect generally to be subject to all of the new regulations in parts 3200 and 3280, so long as the lessee makes such an election no later than 18 months after the effective date of this rule, i.e., no later than December 1, 2008. The provision notes that changes relating to royalty terms are possible only under the royalty conversion rules of final section 3212.25. As explained in the preamble to the proposed rule (71 FR 41544), this provision allowing an existing lessee to elect to be governed by the new regulations is within the BLM's authority under 30 U.S.C. 1005(d), and was prompted by the statutory provision at 30 U.S.C. 1003(d)(2) allowing such an election to lessees whose lease applications were pending on August 8, 2005.

In reviewing this section during drafting of the final rule, we became aware that the language was confusing regarding whether a lessee could make an election under section 3200.7(a)(2) without also obtaining a conversion of royalty terms under section 3212.25. We have therefore added a sentence to this section clarifying that a lessee seeking to make an election under section 3200.7(a)(2) must also obtain a royalty rate conversion under section 3212.25 to make the election under section 3200.7(a)(2) effective. This section alternatively allows a lessee to convert only the royalty rate terms of the lease under subpart 3212.

Section 3200.7 provides that a lessee that does not convert lease terms relating to royalties may apply for a production incentive under final subpart 3212 (if eligible under that subpart). In addition, the section provides that the lessee of a lease issued before August 8, 2005, that was within 2 years of the end of its term on that date, may apply to extend the lease for up to 2 years, to allow achievement of production under the lease or to allow the lease to be included in a producing unit.

Final section 3200.8 addresses geothermal lease applications pending on August 8, 2005, and the status of leases issued pursuant to such applications. The section provides that such leases are subject to parts 3200 and 3280, except that they are subject to the regulations in effect on August 8, 2005 (43 CFR parts 3200 and 3280 (2004)), with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals. However, such lessees may elect to be subject to the new regulations in their entirety. Under such an election, the royalty rate for such leases will convert to those specified in sections 3211.17(a) and 3211.18(a) and not under the process in section 3212.25.

One commenter asked whether someone could top-file over a lease application that was pending on August 8, 2005, and whether the BLM could convert the land to a KGRA (Known Geothermal Resource Area).

The informal answer given to this question at a public meeting in Reno, Nevada on August 31, 2006, was that a noncompetitive lease application pending on August 8, 2005, would have priority. However, if two or more noncompetitive lease applications filed before August 8, 2005, overlap in area, it is possible that the BLM, in processing the applications under the previous regulations, may reclassify the area as a KGRA and require a competitive sale.

Another comment addressing proposed sections 3200.7 and 3200.8 noted that in referencing the transition provisions that also apply in the MMS rules, the BLM does not define or use the same transition terms (i.e., Class I, Class II, and Class III leases) as does the MMS (see the MMS final rule, 30 CFR 206.351). The commenter suggested that it might provide clarity if the BLM regulations utilized the same terminology as the MMS since the two rules have interrelated provisions.

We did not change the proposed rule in response to this comment. The MMS's classification system was designed to describe types of leases for royalty purposes only. In its final rule the MMS has revised its lease class definitions, but neither the proposed nor the final MMS class definitions fully describe the categories of leases for the BLM's purposes. For example, the MMS:

(1) Class I leases include both: (a) Leases existing on August 8, 2005 (existing leases), for which the lessee has not converted the royalty terms under section 3212.25; and (b) Leases issued pursuant to lease applications pending on August 8, 2005 (pending applications), for which the lessee has not made an election under section 3200.8(b). The BLM must, however, distinguish between these two sub-categories because non-converting existing leases are eligible for production incentives under section 3212.18, whereas leases issued pursuant to pending applications that do not elect to be subject to the new regulations are not eligible for production incentives;

(2) Class II leases do not distinguish between direct use leases under subpart 3205, which are restricted to direct use of the resource, and regular leases under subparts 3203 or 3204, which may have direct use. Nor does the Class II designation distinguish between leases issued pursuant to application or competitive sale after August 8, 2005, and those issued in response to pending applications where the lessee elects to be subject to the new regulations under section 3200.8(b); and

(3) Class III leases do not distinguish between: (a) Existing leases that convert only under section 3212.25 (royalty conversion only); and (b) Existing leases that convert under section 3200.7(a)(2) (electing to be subject to all new regulations, which must include a conversion under section 3212.25).

None of the foregoing distinctions is necessary for the MMS royalty purposes, but the BLM must make these distinctions in explaining to different categories of lessees what options Congress made available to them. For these reasons, the BLM did not use the MMS classification system in its proposed rule. We did not change the rule in response to this comment.

Subpart 3201—Available Lands

Subpart 3201 addresses which lands are available for geothermal leasing and which lands are not available for geothermal leasing. It is substantively unchanged from the previous subpart. We made one minor change to section 3201.10 to make it clear that public lands and acquired lands that are administered by the Department of the Interior are available for leasing unless they are withdrawn from such use. We received no comments on this subpart.

Subpart 3202—Lessee Qualifications

Subpart 3202 addresses who may hold geothermal leases, qualifications to hold a geothermal lease, whether other persons are allowed to act on an applicant's behalf, and what happens if an applicant for a lease dies. The subpart is substantively unchanged from the previous subpart. We received no comments on this subpart and have adopted it as proposed.

Subpart 3203—Competitive Leasing

Subpart 3203 explains the new process for competitive leasing, which requires competitive leasing to the highest responsible qualified bidder except as otherwise specified. This differs from the previous process, which provided for competitive bidding only for lands within a KGRA or lands from terminated, expired, or relinquished leases, or at the BLM's discretion when there was public interest.

One commenter objected to ''leasing the geothermal resource for free.'' The BLM disagrees that the geothermal resource will be leased for free. In accordance with the statute, final subpart 3203 provides that companies will pay bonus bids for competitive leases, and final subpart 3211 provides that lessees will pay rentals and either royalties or fees. Regarding the costs the government incurs, final section 3203.12, discussed below, provides that nominators of lands must pay a fee of $100 per nomination plus $.10 per acre, and final sections 3203.17 and 3204.10 provide that lease applicants must pay a processing fee to reimburse the government's processing costs.

One commenter stated that geothermal development is more akin to minerals development than to oil and gas development in that the rights to develop the land need to be secured before significant exploration can occur

because of the risk and capital cost involved. To facilitate leasing and exploration within shorter timeframes, the commenter recommended categorical exclusions to expedite exploration permits and greater use of lease stipulations to address environmental or other issues, even if such stipulations made future development of the leasehold contingent on subsequent permitting and National Environmental Policy Act (NEPA) processes. Another commenter indicated that the timeframes for compliance with the NEPA slow down the overall process and suggested that a developer could do an environmental assessment to comply with the NEPA after the developer has been issued a lease.

We did not change the rule in response to these comments. The Energy Policy Act did not address requirements under the NEPA with regard to geothermal leasing, and the suggested changes are beyond the scope of these regulations and the July 2006 proposed rule.

Final section 3203.5 explains the three stages of the competitive leasing process and summarizes the four specific circumstances in which leases would be issued on a non-competitive basis that are addressed in detail at subparts 3204 and 3205.

One commenter submitted an article entitled ''What We Have Lost,'' authored and endorsed by numerous individuals in the geothermal industry. The article contends that competitive leasing will remove the incentive for companies, large or small, to invest in pre-lease exploration and project assessments, and maintains that an all-competitive leasing process does not fit geothermal resource development.

As the commenter realizes, the statute mandates competitive leasing. Any revision of the system prescribed by the statute would have to occur through Congressional action.

One commenter asked if land can be included in a competitive lease sale only through the nomination process. In considering this question, the BLM concluded that there may be instances where it would be in the public interest to include land in a competitive sale that has not been nominated. In response to this comment, we have revised the language of sections 3203.5 and 3203.10 to clarify that the BLM may include land in a competitive lease sale on its own initiative. We have also revised the language of section 3203.13 to provide that the BLM may hold a competitive lease sale on its own initiative even in a state where no nominations are pending. Examples of when competitive sale of lands that have not been nominated might be in the public interest include adding to a lease sale parcels which might otherwise be drained by wells on adjacent acreage, or putting up for competitive sale land for which the BLM received an application for a direct use lease where the BLM determines that there is competitive interest.

Final section 3203.10 describes the process for nominating lands for competitive sale. In accordance with the statutory amendments, it increases to 5,120 acres (from the previous 2,560 acres) the maximum size of a lease, unless the area to be leased includes an irregular subdivision. This section also explains how a nominator must describe the lands nominated. These land description provisions were previously found at section 3204.11. The only change from those provisions is a clarification that lands surveyed under the public land rectangular survey system are to be described to the nearest aliquot part. This section also makes clear that a nominator may submit more than one nomination, as long as each nomination satisfies the acreage and land description requirements and includes the required filing fee, and that the BLM may reconfigure lands to be included in each parcel offered for sale.

Two commenters stated that the proposed rule did not address the situation of geothermal projects that contain both Federal and non-federal lands, which one commenter said constituted the majority of its projects. These commenters were concerned that a competitive leasing system could result in a developer having to wait up to 2 years to find out whether it is able to acquire a lease to Federal land parcels adjacent to or intermixed with non-federal lands on which leases could be speedily acquired. They stated that if a developer cannot control the entire resource, it cannot secure financial backing to build a power plant. They recommended revising the regulations to provide for ''direct''—by which they apparently meant ''non-competitive'' but not exclusive direct use—leasing of Federal lands in a number of scenarios which would provide effective control to a holder of non-federal interests.

The commenters appear to be suggesting that an entity that already controls the majority of leases overlying a geothermal resource area should have the right to acquire a lease on any contiguous Federal lands. We did not change the rule in response to these comments because the statute requires a competitive leasing process except in specific circumstances. The circumstances under which Congress decided to allow noncompetitive leasing do not include the leasing of adjacent or intermixed Federal lands. Implementing this suggestion would require statutory change. We note that once all of the Federal and private lands are leased, control of the resource can be achieved through commitment of all the lands, both Federal and private, to a unit. The unit provisions are in subpart 3280 and are discussed below.

The commenters also suggested that a less-favored alternative to noncompetitive leasing of adjacent or intermixed lands would be to grant the ''contiguous resource owner'' a right of first refusal in a competitive lease sale. In informal discussions at the public meeting on the proposed geothermal rule in Reno, a BLM representative may have indicated agreement with the suggestion that a contiguous resource owner might be able to obtain a right of first refusal. A careful reading of the statute, however, makes it clear that it does not provide a right of first refusal as an option to any bidder in a competitive lease sale. The language of the statute is: ''Except as otherwise specifically provided by this Act, all land to be leased that is not subject to leasing under subsection (c) [noncompetitive leasing when no bids are received in a competitive lease sale] shall be leased * * * to the highest responsible qualified bidder * * *.'' 30 U.S.C. 1003(b)(1). The specific exceptions to including land in a competitive lease sale involve lands subject to mining claims, leases issued pursuant to applications pending when the statutory amendments were enacted, and direct use leases. Because Congress did not provide an exception for resource owners of contiguous or intermixed lands, the Department has no authority to make such an exception.

One commenter asked how lease nominations would be prioritized in terms of processing under the NEPA, and whether all of the pending lease applications would be administered before the BLM began working on nominated lands.

As explained at the public meeting in Reno, prioritization in terms of NEPA processing is not within the scope of these regulations. In general, nominations are processed on a ''first-in, first-out'' basis. However, the BLM may establish priorities based on the adequacy of existing NEPA documents in order to issue leases as efficiently as possible. In such circumstances, it is possible that newer nominations could be processed ahead of older ones. The BLM will begin processing nominated lands as the nominations are received.

Final section 3203.11 implements the new statutory provision, at 30 U.S.C. 1003(e), that the BLM may offer parcels as a block at a competitive sale when it is reasonable to expect that a geothermal resource that can be produced as one unit underlies those parcels.

One commenter inquired ''who, when and how'' it will be determined that leases should be issued as a block to avoid the ''checkerboard'' ownerships often arising through the competitive process. In response to this comment, we have revised the language of section 3203.11(a) to clarify that a nominator may request that leases be issued as a block or the BLM may offer leases as a block on its own initiative, and that, in either case, the BLM will offer parcels as a block only if information is available indicating that a geothermal resource that could be produced as one unit can reasonably be expected to underlie such parcels. The timing of block requests would be at the time of nomination by the nominator, or by the time of the sale notice if by the BLM's initiative. At the time of nomination, a nominator could bring to the BLM's attention any concerns it may have that checkerboard ownership of the parcels could impede development of the geothermal resource. The BLM may take that into consideration in deciding whether to offer the nominated lands as a block or as individual parcels.

One commenter suggested that proposed section 3203.11 be strengthened by requiring that block nominations be accompanied by geologic and scientific data sufficient to show that the nominated lands will most likely contain geothermal resources from the same pool or structure, and not rely solely on the BLM's general knowledge of the area. We believe that proposed section 3203.11 already addresses the commenter's concern by requiring that a nominator submit information to support its request. In response to this comment, however, we moved the language in section 3203.11(b) of the proposed rule, that ''BLM may request that you provide additional information'' to section (a) to clarify that it pertains to nomination block requests, and we strengthened it by replacing ''request'' with ''require'' so that it reads: ''BLM may require that you provide additional information.'' The BLM will not offer parcels as a block unless it determines that a geothermal resource that could be produced as one unit can reasonably be expected to underlie such parcels, and will consider available information to make that determination.

Final § 3203.12 provides for a filing fee for nominations of lands. In this final rule, the amount of the fee—$100 per nomination plus $0.10 per acre of lands nominated—was moved from proposed section 3203.12 to the fee schedule at section 3000.12 as explained in the preamble to the proposed rule (71 FR 41545). We also made a conforming amendment to section 3000.12. As with all fees in the fee schedule in section 3000.12, these amounts will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product by way of publication of a final rule in the **Federal Register**, and will subsequently be posted on the BLM Web site (*http://www.blm.gov*) (see section 3000.12(a)).

One commenter stated that government agencies incur costs with leasing operations and those costs should be covered. The commenter wrote that the BLM and others agencies need these funds to monitor nearby springs and monitor the effects of the extraction.

The BLM agrees that the costs it incurs as a result of leasing operations should be reimbursed by the lessees. For this reason, final section 3203.12 requires a filing fee for nominations of land, as further discussed below, and final sections 3203.17, 3204.10, 3205.10, and 3211.10 provide that lease applicants must pay a processing fee to reimburse the government's processing costs. We did not change the rule in response to this comment. We discuss monitoring below in connection with final section 3206.11 in response to another part of this commenter's comments.

Two commenters opposed the concept of nomination fees. One commenter stated that the nomination process gives the BLM the benefit of a company's exploration expertise, providing the BLM and the public with valuable insights for which the BLM should not charge a fee. The commenter asked at the public meeting in Reno whether a nomination was limited in acreage, that is, whether the $100 filing fee was per lease, and in later written comments stated that the fee ''is 'per parcel,'' which has apparently been interpreted as 'per lease.' '' The commenter suggested that charging a nomination fee further discourages geothermal development on Federal lands. Another commenter suggested that the nomination fee should only cover administrative costs, and that these funds should be retained by the local BLM office for that specific purpose.

We did not change the rule in response to these comments. As explained in the preamble to the proposed rule, the BLM is authorized to charge reasonable filing fees under Section 304(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1734(a) (71 FR 41545). Congress gave no indication in its amendments to the Geothermal Steam Act that it intended to insulate geothermal nominators from fees. The general Federal policy regarding fees, also discussed in the preamble to the proposed rule, is to charge a processing fee that recovers the agency's reasonable processing costs, which corresponds to the suggestion by the second commenter just cited. The BLM does not at this time have the data necessary to determine its actual costs of processing nominations, but our experience indicates that those costs far exceed $100 per nomination and $0.10 per acre. In order to discourage frivolous nominations, we proposed this nominal filing fee (see Solicitor's M—Opinion No. M–36987, ''BLM's Authority to Recover Costs of Minerals Document Processing,'' at n.6). We will collect data on the actual costs of processing these nominations and expect to propose a processing fee to cover reasonable agency costs in the future.

One commenter at the August 31, 2006, public meeting in Reno asked whether a nomination of lands for a competitive sale is limited in acreage. The response correctly noted that, as provided in proposed and final section 3203.10(b), a nomination may not exceed 5,120 acres (unless the area to be leased includes an irregular subdivision), which is the maximum size of a lease (see section 3206.12). We want to clarify, however, that the nomination fee is per nomination, not per lease. Proposed and final section 3203.12 states that a nominator must submit the filing fee ''with your nomination.'' While each nomination is limited to the maximum acreage of a lease, in ''parceling'' the land before the lease sale (see explanation below) BLM may decide to offer the nominated lands as more than one lease. Thus, the $100-per-nomination filing fee could cover more than one eventual lease, but cannot cover more than 5,120 acres (with the exception noted).

There also appears to be some confusion regarding the terminology of ''nomination,'' ''lease,'' and ''parcel.'' After nomination, but prior to the lease sale, the BLM will prepare the nominated lands for competitive sale. This process, often referred to as ''parceling,'' involves: subdividing nominated areas into areas that do not

exceed the maximum allowed size for a lease; accurately describing the lands in conformance with the legal land system; and attaching appropriate stipulations from the land use plans. Thus, the fee is neither ''per parcel'' nor ''per lease,'' but ''per nomination.'' It is possible that after parceling, lands offered in a competitive sale may not be configured as originally nominated. In general, the BLM refers to lease offerings as parcels.

Regarding the comment that fees collected should be retained by the local BLM office, we explained in the preamble to the final minerals cost recovery rule (70 FR 58861, October 7, 2005) that the ''BLM intends to structure its budget processes to return fees collected to the BLM office which processes the actions.'' Thus, the BLM has already addressed future implementation of this suggestion.

Final section 3203.13 provides that the BLM will hold a competitive lease sale at least once every 2 years in states where nominations are pending, and allows for a sale to include lands in more than one state. As explained above, we have also added language to clarify that the BLM may include land in a competitive lease sale on its own initiative. As explained in the preamble to the proposed rule (71 FR 41545), we deleted the provision at previous section 3205.13 regarding the fair market value of bids because we concluded that the competitive bidding process itself is a reflection of the fair market value of the lease. Moreover, eliminating this bidding floor may encourage more competitive bidding, which both serves the Energy Policy Act policy of encouraging development of geothermal resources and is economically beneficial to the United States to the extent leases are issued competitively, because competitive leases are issued with bonus bids and have higher rental rates.

A number of commenters urged that proposed section 3203.13 be revised to require more frequent lease sales. These commenters noted that the statute requires that lease sales be held at minimum every 2 years and does not establish a cap that would prevent more frequent leasing. Various reasons were cited in support of holding lease sales more frequently, e.g.: Long delays in the leasing process would make financing difficult or impossible and stunt development; The geothermal production tax credit has only a 2-year window; Leasing only every 2 years would not accomplish the goals of the Energy Policy Act; and Competitors could spend the time waiting for a lease sale proving up the resource to know how to outbid the nominator. Some commenters suggested that the regulations should require the BLM to hold quarterly lease sales, as in the oil and gas program, in any state where there are nominations pending, and require that the BLM process all lease nominations within 6 months. One commenter suggested that geothermal lease sales be held in conjunction with quarterly oil and gas lease sales. A commenter also recommended that the BLM require quarterly publication of the status of pending lease nominations and the reason for further delay if the tract has not been put forward for leasing after 6 months. One commenter suggested that the rule provide that 2 years is the maximum, but that the BLM will attempt to hold a lease sale every 60 days.

We did not change the rule in response to these comments. As the commenters noted, section 3203.13 provides the same time frame as the statute at 30 U.S.C. 1003(b). As the commenters also acknowledged, nothing in the statute or the regulations precludes more frequent lease sales. The quarterly competitive sales for oil and gas are mandated by statute. Congress made the decision not to impose a similar mandate for geothermal leasing, and we decline to add such a mandate in these regulations. We recognize that more frequent lease sales may benefit geothermal development and we expect that BLM state offices will schedule sales as frequently as feasible when lands are available for leasing. The decision whether to hold geothermal lease sales in conjunction with some oil and gas lease sales will be made on a state-by-state basis. Regarding the comment that competitors could spend time before a lease sale exploring the potential resource, we note that pre-leasing exploration is available to the nominator as well as to competitors.

Final sections 3203.14 and 3203.15 describe how the BLM will notify the public of competitive lease sales, the types of information the BLM will include in a notice of sale, and how the BLM will conduct the sale. Unlike the previous regulations at subpart 3205, this final rule does not restrict the competitive sale process to sealed bids, but is flexible enough to allow other competitive sale formats, such as oral auctions. We anticipate that most sales will be conducted through oral auctions.

In order to protect the bidding process, we added at section 3203.15(c) a standard auction requirement that a bid may not be withdrawn and that a bid constitutes a legally binding commitment. This is current BLM practice both in the geothermal and oil and gas leasing programs.

We received no comments on sections 3203.14 and 3203.15 and have adopted them as proposed.

Final section 3203.17 provides information related to the payment obligations of a successful bidder. Because the proposed competitive sale process is no longer restricted to sealed bids, a bidder will not have to submit any payments unless at the end of the sale it is the high bidder. This section provides that a successful bidder must pay twenty percent of the bid, the total first year's rental, and the processing fee by close of business on the day of the sale or such other time as the BLM may specify. While the general expectation is that these payments will be made on the day of the sale, the section allows the BLM to specify another time for payments to be made if circumstances so require, such as, for example, the following business day. This section also adds personal checks to the list of financial instruments that may be used to make it easier for the successful bidder to make payments immediately after the sale. Final section 3203.17(c), like previous section 3205.16, requires that the balance of the bid be submitted within 15 calendar days after the sale.

Two commenters objected that same day payment is not practical, nor possible in some cases, since the amount of the successful bid is not known prior to auction. One suggested that provision should be made for a 5-business-day settlement period for bids.

We did not change the rule in response to these comments. The regulations at section 3203.17 provide that payment may be made by personal check, as well as other specified means, and that the BLM may specify another time for payment. We believe that these provisions provide ample opportunity for a lessee to make payment as directed under the regulation. We note that the regulations for oil and gas lease sales require payment by close of business on the day of sale, and experience shows that companies are able to comply with this provision.

Final section 3203.18 cross-references subpart 3204, which addresses noncompetitive leasing other than direct use leases.

Subpart 3204—Noncompetitive Leasing Other Than Direct Use Leases

Final subpart 3204 describes when and how the BLM will issue noncompetitive geothermal leases. The most common method of obtaining noncompetitive leases under this subpart will be applying for parcels of land that did not receive bids in a competitive sale. This subpart does not address noncompetitive leases for lands

available exclusively for direct use of geothermal resources, which are covered in final subpart 3205.

Final section 3204.5 lists the four types of lands available for noncompetitive leasing: (1) Parcels of land that did not receive bids in a competitive sale; (2) Lands available exclusively for direct use, addressed at final subpart 3205; (3) Lands subject to mining claims, addressed at final section 3204.12; and (4) Lands for which a lease application was pending on August 8, 2005, if the applicant so chooses.

One commenter suggested that oil and gas leases be allowed to include the rights to geothermal resources underlying their oil and gas leases, at least for a grandfathered period. The commenter expressed concern that if the geothermal rights were put up for competitive bid, someone else could acquire them and drill geothermal wells among the oil and gas wells, interfering with oil and gas production.

Oil and gas leases do not include the right to develop the geothermal resources; they are authorized under separate statutes and processes and a separate geothermal lease would have to be obtained. The commenter may have meant to suggest that oil and gas lessees be allowed to acquire geothermal leases for underlying resources on a noncompetitive basis. However, the statute allows noncompetitive leasing only in the four situations listed above. An oil and gas operator could apply for a noncompetitive direct use lease for the underlying geothermal resources, but if the BLM determined that there was competitive interest in a direct use lease, or that the area was appropriate for commercial generation of electricity from the geothermal resources, it would hold a competitive lease sale. It is thus possible that another entity could acquire a lease for the geothermal resources underlying the oil and gas lease. It is possible that lease stipulations could be inserted to avoid interference with a senior oil and gas lease. The statute at 30 U.S.C. 1016 contains requirements to avoid interference to protect both geothermal interests and other uses.

Final section 3204.10 requires an applicant for a noncompetitive lease to submit a processing fee and advance rent. The advance rent will be refunded if the application is rejected or withdrawn. These provisions are substantively the same as previous section 3204.12. We received no comments on this section and have adopted it as proposed.

Final section 3204.11 explains the procedures for noncompetitive leasing of lands for which no bid is received in a competitive lease sale. This implements the statutory requirement at 30 U.S.C. 1003(c). For efficiency of administration, in the first 30 days following the competitive sale, applications will be accepted only for parcels as configured in the sale notice. To provide equal opportunity during the first 24 hours after the lease sale, all applications received for a particular parcel on the first business day after the competitive sale will be considered as simultaneously filed, and the BLM will select one at random to receive a lease offer. A fair market value bid is not required for a noncompetitive lease. It would be difficult for the BLM to determine what an appropriate bid should be in a noncompetitive situation; moreover, allowing leases to be obtained without a bid should encourage additional geothermal exploration and development. We received no comments on section 3204.11 and have adopted it as proposed.

Final section 3204.12 implements the statutory provision at 30 U.S.C. 1003(b)(3) that allows a mining claimant with an approved plan of operations to apply for a noncompetitive geothermal lease. One commenter asked if a developer has a mining claim on acreage with an approved plan of operations, whether there is the same required 2-year waiting period following a competitive lease sale as lands that do not have a mining claim.

We did not change the rule in response to this comment. Under final section 3204.12, the 2-year noncompetitive window following a competitive lease sale does not apply to a mining claimant with an approved plan of operations. A mining claimant with an approved plan of operations may file a noncompetitive lease application at any time up to the point that the BLM has accepted a bid for a lease on those lands.

Final section 3204.13 implements a portion of the statutory provision at 30 U.S.C. 1003(d)(2) that allows lease applications pending on August 8, 2005, to be processed under then-existing policies and procedures unless the applicant elects for the lease to be subject to the new leasing procedures. We received no comments on this section and have adopted it as proposed.

Final section 3204.14 governs the amendment of noncompetitive lease applications. It provides that an applicant may amend an application at any time before the BLM issues a lease if the amended application meets the requirements in this subpart and does not add lands not included in the original application. To add lands, an applicant must file a new application. (The withdrawal of lands from noncompetitive lease applications is covered by final section 3204.15, discussed below.) This is a change from the previous regulations, as discussed in the preamble to the proposed rule, because the BLM decided that adding lands to an application was equivalent to submitting a new application, requiring a change in the priority date. We received no comments on this section and have adopted it as proposed.

Final section 3204.15 provides that for 30 days after a competitive lease sale, the BLM will not accept partial withdrawals of noncompetitive lease applications, but will only accept withdrawals of entire noncompetitive lease applications. As explained in the preamble to the proposed rule, this is a change from previous section 3204.17, and is parallel to the provision at final section 3204.11 restricting noncompetitive applications for reconfigured lease parcels for the first 30 days following a competitive sale. After 30 days, partial and whole withdrawals will be allowed at any time before the BLM issues the lease. Final section 3204.15 also provides (as did section 3204.17 of the previous regulations) that if a partial withdrawal results in failure to meet the minimum acreage required for a lease in final section 3206.12, the BLM will reject the lease application.

Subpart 3205—Direct Use Leasing

The Energy Policy Act provides the authority for the BLM to issue noncompetitive leases solely for the direct use of geothermal resources under certain conditions. Subpart 3205 is a new subpart added to describe these conditions and the process for applying for a direct use lease. This subpart implements the provisions of 30 U.S.C. 1003(f). ''Direct use lease'' as used in this subpart has a specific meaning. As discussed above in relation to section 3200.1 (Definitions), we have revised the definition of ''direct use lease'' to clarify that such a lease is issued noncompetitively. The new definition of ''direct use lease'' is ''a lease issued noncompetitively in an area BLM designates as available exclusively for direct use of geothermal resources, without sale, for purposes other than commercial generation of electricity.'' Competitive leases also allow direct use, but they are not direct use leases. Unlike a direct use lease, under a competitive lease that the BLM has decided to limit to exclusive direct use, the resource may be sold (but it may not be used by the

operator or a purchaser for the commercial generation of electricity), and the acreage restrictions will be those applicable to competitive leases rather than direct use leases.

Thus, permitted uses under different types of leases are as follows: (1) A lessee with a direct use lease may only use the resource directly itself; (2) A lessee with a competitive lease that is restricted to exclusive direct use may either use the resource directly itself or sell the resource to a purchaser who will use it only for direct use; (3) A lessee with either a competitive lease or a noncompetitive lease obtained following a sale that is not restricted to exclusive direct use may use the resource directly itself, sell the resource for direct use, use the resource for the commercial generation of electricity, or sell the resource for the commercial generation of electricity.

Final section 3205.6 addresses the conditions under which the BLM issues direct use leases. This section explains that a direct use lease may be issued to the first qualified applicant only for lands that: (1) Are open for geothermal leasing; (2) Are appropriate for exclusive direct use, without sale, for purposes other than commercial generation of electricity; (3) Do not include more acreage than reasonably necessary for the proposed use; (4) Have been the subject of a published notice that did not result in a nomination; and (5) Are of no competitive interest, as determined by the BLM. The BLM will make the determination of whether the lands are appropriate for a direct use lease on a case-by-case basis at the time of application. The advantage of a direct use lease is that it may be issued noncompetitively to the first qualified applicant and may allow additional lands to be made available for geothermal leasing that would not be available, for environmental or other reasons, if the geothermal resource could be used for the commercial generation of electricity.

We revised the title of section 3205.6 from that in the proposed rule, to read ''When may BLM issue a direct use lease to an applicant?'', instead of ''When will'', to reflect the statutory language and the language of the regulatory text. We also added a paragraph (b) to the section to clarify that if the BLM determines that land for which an applicant has applied under this subpart is open for geothermal leasing and is appropriate only for exclusive direct use operations (see definition of ''direct use''), but determines that there is competitive interest in the resource, it will include the land in a competitive lease sale with lease stipulations limiting operations to exclusive direct use.

Numerous comments were received opposing direct use leasing. One commenter predicted that direct use leasing could cause ''major headaches and legal entanglements down the road'' because improved technology or discovery of high-temperature resources would cause a direct use lessee to wish to produce electricity from the lease for sale offsite. The commenter suggested that because the statute permits, but does not require, direct use leasing, the BLM should ''just say no'' to such leasing. Another commenter agreed, asking what the BLM would do if a direct use lessee wanted to generate electricity, hypothesizing that if a direct use lessee found the resource was electrical grade, others would know and would want to file a nomination for a lease for electrical generation on the lease which the lessee had spent a great deal of money to obtain. The commenter also asked what the BLM would do if a lessee were generating electricity and wanted to drill wells for a greenhouse or other direct use.

Congress provided a detailed process for the Secretary to allow limited noncompetitive direct use leasing in certain areas. We have interpreted the statutory provisions to allow for limited direct use leasing on certain lands which: (1) Would otherwise not be open to geothermal development at all due to potential impacts to other resource values; or (2) The BLM determines do not have potential for commercial electrical generation. We agree that it is possible that improved exploration, technology, or energy economics could cause a direct use lease to have the potential for commercial generation of electricity. However, the statute is clear that Congress intended that leases permitting commercial generation of electricity are to be offered through competitive lease sales. We would therefore not allow commercial electrical generation on a direct use lease. If a direct use lessee found an electrical grade resource, it would continue to have the right to develop the resource for direct use for the duration of its lease. As was pointed out at the public meeting in Reno, nothing prevents a lessee with an unrestricted competitive lease from using the resource for direct use as well as for electrical generation. We envision direct use leases as providing a streamlined, simpler noncompetitive process for development of geothermal areas that would otherwise not be developed.

One commenter expressed concern regarding the administration of units that contain both regular and direct use leases.

The BLM, in determining what areas are appropriate for direct use leases, will make every effort to avoid issuing direct use leases in areas with electrical generation potential. We would avoid including a direct use lease in a unit with leases that generate commercial electricity, because a direct use lease does not convey the rights to develop the resource commercially. It is possible that a unit could be formed entirely of direct use leases.

One commenter believed there were two problems that direct use leasing and a direct use fee schedule were designed to address, and that both could have been resolved without direct use leasing. First, the commenter suggested that direct use leasing would not solve the problem of undesirable features being built (i.e., power plants and transmission lines), because direct use itself could involve undesirable features (e.g., a direct use meat packing plant with feedlots, holding pens, and traffic). Second, the commenter suggested that the perceived problem of an overly-burdensome royalty rate for direct use under the previous system was created by the institution of all-competitive leasing, and could have been solved by retaining the prior leasing system and providing for a fee on all direct use and a royalty on power generation, keeping noncompetitive rentals at $1 per acre.

Regarding the second part of this comment, it appears that the commenter may be confused regarding when the direct use fee schedule applies. In fact, as the commenter suggested was appropriate, the fee schedule applies to all direct use of the resource regardless of the type of lease. We also note that the rental for noncompetitive leases under these new regulations remains at $1 per acre for the first 10 years. The first part of the comment, and arguments that the new competitive leasing system should be revised, should, as the commenter recognized, be addressed by Congress.

We did not change the rule in response to these comments.

Final section 3205.7 addresses the statutory acreage restrictions applicable to a direct use lease, which must not cover more than the quantity of acreage reasonably necessary for the proposed use, and in no case may exceed 5,120 acres, except in the case of an irregular subdivision. We received no comments on this section and have adopted it as proposed.

Final section 3205.10 explains the procedures for applying for a direct use lease and the types of information to be submitted with an application. The

information that is submitted is used by the BLM to determine if the requested acreage is necessary for the intended operation as described in section 3205.7. This section would also require the submission of a nonrefundable processing fee for noncompetitive lease applications, as required by section 3204.12 of the current regulations.

One commenter stated that newcomers to the industry may not understand that, under section 3205.10, a direct use lessee is permitted to produce electricity on the lease, but only to serve the load of the direct use facility, and suggested that this should be spelled out.

To clarify the rule in response to this comment, we revised the last sentence of section 3205.10(a) to utilize the defined phrase ''commercial generation of electricity,'' instead of the proposed language ''to commercially generate electricity.'' The sentence now reads: ''You may not sell the geothermal resource and you may not use it for the commercial generation of electricity.'' The definition of ''commercial generation of electricity'' is ''generation of electricity that is sold or is subject to sale, including the electricity or energy that is required to convert geothermal energy into electrical energy for sale.'' Electricity that is produced on a direct use lease only to serve the load of the direct use facility does not fall within this definition and, as the commenter correctly pointed out, such use is permitted.

A commenter stated that precluding the sale of the geothermal resource from a direct use lease seems counterproductive, because a purchaser might also use the resource for direct use and not for the commercial generation of electricity. The commenter asked whether, for example, a lessee could produce the resource and sell it to a direct use or power generation facility if it served only those facilities and was not sold into the power grid, or whether a lessee could use the resource directly itself, then sell the effluent to a third party for use in an adjacent district heating system not owned by the production lessee. The answer to these questions is no; a direct use lessee may not sell the resource even if it would not be used for commercial generation of electricity after sale. The BLM is constrained in drafting its regulations by the language of the statute, which provides that direct use leasing must be ''exclusively for direct use of geothermal resources, without sale for purposes other than commercial generation of electricity * * *.'' 30 U.S.C. 1003(f). Please note the use of the phrase ''without sale'' in the statutory language. The BLM does not have discretion to allow sale of the resource by a direct use lessee. A potential lessee who is interested in selling the resource for any purpose should nominate the lands for a competitive lease sale. We did not change the rule in response to this comment.

One commenter was concerned that a direct use lessee would be prohibited from selling the business or property that uses the resource that is produced or producible from the lease, or would be prohibited from transferring the lease and the resource producible therefrom.

A direct use lessee may assign (transfer) the lease. However, the lease and the business to which it supplies the geothermal resource must be transferred together to the same entity. This is because the statute prohibits sale of the resource from a direct use lease. We did not change the rule in response to this comment.

One commenter expressed concern that information required by section 3205.10(b) to apply for a direct use lease would not be available until after the lease was issued and the lessee could drill wells. The BLM disagrees. Because the statute limits a direct use geothermal lease to the quantity of acreage reasonably necessary for the proposed use, the BLM must obtain the information necessary to make this determination in advance of lease issuance. The BLM expects that the applicant will be able to explain the nature and scope of the intended use, which is what this section requires. The language of the regulation recognizes that the information provided is not necessarily complete or final, but will be based on anticipated production and development. We did not change the rule in response to this comment.

Final section 3205.12 addresses direct use lease applications for lands managed by an agency other than the BLM. The BLM will forward a copy of such an application to the other agency. If that agency consents to leasing and recommends that the lands are appropriate for a direct use lease, the BLM will consider that consent and recommendation in determining whether to issue the lease. This section requires that the BLM obtain the consent of the surface management agency before issuing a direct use lease. We received no comments on this section and have adopted it as proposed.

Final sections 3205.13 and 3205.14 allow an applicant for a direct use lease to withdraw its application at any time or amend its application, without adding new lands, prior to lease issuance. To add new lands, an applicant must file a new application (see discussion of final section 3204.14, above). We received no comments on these sections and have adopted them as proposed.

Final section 3205.15 discusses how the BLM will inform an applicant of its decision to approve or deny a direct use lease application. We received no comments on this section and have adopted it as proposed.

Subpart 3206—Lease Issuance

Final subpart 3206 addresses lease issuance in general.

Final section 3206.10 is nearly identical to previous section 3206.10, with the addition of a provision notifying applicants that all payments must be made before the BLM will issue a lease. This addition reflects current BLM practice. We received no comments on this section and have adopted it as proposed.

Final section 3206.11 discusses what the BLM must do before issuing a lease. The section is unchanged from the previous regulations except for changing the words ''will not significantly impact'' at the beginning of paragraph (b), to ''will not have a significant adverse impact on,'' which more closely tracks the language of 30 U.S.C. 1026(c).

One commenter voiced a concern regarding safeguarding thermal features of national parks.

Both the Geothermal Steam Act and the regulations already provide safeguards for thermal features of national parks. Final section 3206.11(b), in accordance with 30 U.S.C. 1026(a), provides that before issuing a lease, the BLM must determine that lease development will not have a significant adverse impact on any significant thermal feature of National Park System units. Moreover, the Geothermal Steam Act at 30 U.S.C. 1026(b) provides that the Secretary must maintain a monitoring program for significant thermal features within units of the National Park System. We did not change the rule in response to this comment.

Final section 3206.12 addresses minimum and maximum lease sizes, which were addressed in the previous regulations at section 3204.14. The maximum lease size increased from 2,560 acres to 5,120 acres, as provided at 30 U.S.C. 1006. We received no comments on this section and have adopted it as proposed.

Final section 3206.13 addresses the maximum acreage that one lessee may hold, which was addressed in the previous regulations at section 3206.12. This section is identical to the first sentence of previous section 3206.12

and implements 30 U.S.C. 1006, which sets the limit at 51,200 acres in any one State. The remainder of section 3206.12 of the previous regulations was deleted because the Energy Policy Act amendments deleted those provisions in the statute. We received no comments on this section and have adopted it as proposed.

Final section 3206.14 explains how the BLM computes acreage holdings. This section is identical to previous section 3206.13, except for minor editorial changes. We received no comments on this section and have adopted it as proposed.

Final section 3206.15, explaining how the BLM will charge acreage holdings if the United States owns only a fractional interest in the geothermal resources, is identical to previous section 3206.14, except for minor editorial changes. We received no comments on this section and have adopted it as proposed.

Final section 3206.16 explains that acreage is not chargeable against the acreage limitations if it is included in any approved unit agreement or development or drilling contract. These exclusions implement 30 U.S.C. 1017(d) and (g)(2) and were addressed at section 3206.15 in the previous regulations. The reference in the previous regulations to cooperative agreements was deleted because they are no longer mentioned in this part. We received no comments on this section and have adopted it as proposed.

Final section 3206.17 addresses what the BLM does if a lessee's holdings exceed the maximum acreage limits set in final section 3206.13. This section is identical to section 3206.16 of the previous regulations. We received no comments on this section and have adopted it as proposed.

Final section 3206.18 addresses when the BLM issues a lease. It is identical to section 3206.18 of the previous regulations, except for a minor editorial change. We received no comments on this section and have adopted it as proposed.

Subpart 3207—Lease Terms and Extensions

Final subpart 3207 explains the new system of lease terms and extensions provided at 30 U.S.C. 1005.

Final section 3207.5 summarizes the new lease terms (length of time a lease is in effect) and lease term extensions, which include: (1) A 10-year primary term and two 5-year extensions of the primary term; (2) A five-year drilling extension; (3) A production extension of up to 35 years; and (4) A renewal term of up to 55 years. We received no comments on this section and have adopted it as proposed.

Final sections 3207.10, 3207.11, and 3207.12 address the primary term of a lease and explain the requirements for obtaining and continuing extensions of the primary term. As explained in the preamble to the proposed rule (71 FR 41547), we interpret the statute as giving the BLM authority to prescribe work requirements that must be completed by the end of the 10th lease year, in accord with the statutory language relating to work requirements and in order to give effect to the statutory 10-year primary term, and to provide a basis for deciding whether the BLM will grant the initial 5-year extension. We note that work requirements relating to the initial and additional extensions of the primary term are addressed in different paragraphs of 30 U.S.C. 1005. Paragraph (a)(2) of section 1005 mandates that for each year of an initial 5-year extension lessees must satisfy work requirements under paragraph (b) or make payments in lieu of minimum work requirements under paragraph (c). Paragraph (a)(3) provides that a lessee must be granted an additional 5-year extension if it satisfied the requirements of the initial extension; paragraph (b) then mandates minimum work requirements for each year after the 10th year of the lease.

Final section 3207.11 establishes work requirements that a lessee must meet within the 10-year primary term for a lessee to be eligible for the initial 5-year extension of the primary term. The BLM formulated its list of potential types of work that could be performed to meet the work requirements based on the statutory provision, at 30 U.S.C. 1005(b)(2). The provisions require that the work should establish a geothermal potential or, if that potential has been established, should confirm the existence of producible geothermal resources. The amount of work that must be performed is quantified as a minimum dollar expenditure per acre, as it was in the previous regulations (see previous sections 3210.13 (diligent exploration requirements) and 3208.14 (significant expenditures)).

For the work requirements that must be completed by the end of the 10th year of the lease, final section 3207.11(a) requires a $40 per acre expenditure over the 10-year period of the primary term of the lease, which is the same expenditure that was required at section 3210.13 of the previous regulations for diligent exploration during the primary term. For work requirements for each year of the initial 5-year extension, final section 3207.12(a) requires an annual dollar expenditure of $15 per acre, which is the same as was required at section 3208.14 of the previous regulations for significant expenditures during a first lease extension. For work requirements for years 16 through 19 of the additional 5-year extension, final section 3207.12(c) requires an annual dollar expenditure of $25 per acre. No work is required for the 20th year because the lessee must obtain either a drilling extension (section 3207.14) or a production extension (section 3207.15) to hold the lease beyond the 20th year. We determined that the dollar expenditure for work requirements should increase enough during an additional extension to motivate a lessee to put a lease into production if it is not already producing in commercial quantities by the end of the 15th year. As the annual expenditure requirement increases $11 per acre after the 10th lease year (from $40 over a 10-year period, or an average of $4 per acre per year, to $15 per acre per year), we require in final section 3207.12(c) that the expenditure increase by a nearly equivalent amount—$10 per acre—after the 15th lease year (from $15 to $25 per acre per year). We believe this level of increase serves the purpose of encouraging diligent development of the resource.

One commenter asked whether a lessee's own work on a lease would count toward satisfaction of the work requirement if the lessee was a geologist qualified to do valuable work on a lease.

As was true under the previous regulations, a lessee's work on a lease may count toward satisfaction of the work requirement as long as it is engaged in activities that establish a geothermal potential or confirm the existence of producible geothermal resources. A lessee's geologic work on a lease may count if it results in original, independent data, for example, mapping or preparing geological cross-sections of the lease area. The dollar expenditure under such circumstances would be calculated by the equivalent cost of paying a professional geologist for similar maps or cross-sections.

Final sections 3207.11(b) and 3207.12(d) allow a lessee to make minimum annual payments instead of performing the work requirements, as provided in the statute at 30 U.S.C. 1005(c). These sections provide that a lessee may make a payment equivalent to the required work expenditure, such that the total of the payment and the value of the work performed equals the dollar value of the expenditure that would otherwise be required. As provided in the statute, these sections also allow the BLM to limit the number of years that it accepts such payments, if it determines that payments in lieu of

work requirements will impair achievement of diligent development of the geothermal resource. We concluded that such impairment determinations are more appropriately made on a case-by-case basis and therefore we did not include in the rule a specific limit on the number of years that the BLM will accept such payments.

The final rule takes a different approach than the previous rule regarding the amount of payments that are allowable in lieu of work performance, in that it does not allow payments in a lesser amount than the value of the required work. We believe this change furthers the statutory purpose of encouraging the development of geothermal resources.

The final rule also includes an automatic inflation adjustment for the minimum work requirements and for monetary payments in lieu of the work performance. Final sections 3207.11(f) and 3207.12(i) provide that the dollar amount of the requirements will be adjusted automatically every three calendar years based on the Implicit Price Deflator for Gross Domestic Product that is published annually by the U.S. Department of Commerce. Because the adjustments will simply be based on a mathematical formula, the adjustments will be made in succeeding final rules without notice and comment, which is the procedure that the BLM used in its cost recovery rule published on October 7, 2005 (70 FR 58872).

One commenter objected to the inclusion of an inflation adjustment for these payments, suggesting that such an adjustment is not authorized by law. We disagree with the comment. The statute authorizes the Secretary of the Interior to set reasonable work requirements (''The Secretary shall issue regulations prescribing minimum work requirements for geothermal leases * * *.'') and in lieu payments (''In lieu of the minimum work requirements * * * the Secretary shall by regulation establish minimum annual payments * * *'') 30 U.S.C. 1005(b)(2) and (c). It is within the Secretary's discretion to choose a reasonable approach to setting such requirements and payments. Nothing in the statute precludes the inclusion of an inflation adjustment, which is a widely-used and generally accepted approach. We did not change the rule in response to this comment.

Final sections 3207.11(b) and 3207.12(d) provide that a lessee is exempt from work requirements if it submits documentation to the BLM showing that it has produced or utilized geothermal resources in commercial quantities. This implements 30 U.S.C. 1005(f), which provides that minimum work requirements do not apply after the date on which the geothermal resource is utilized in commercial quantities.

Final sections 3207.11(c) and (e) and 3207.12(f) and (g) provide timeframes for a lessee to submit information to the BLM showing that it has met the work requirements or paid or produced in lieu thereof, explain the type of information that must be submitted, and explain the BLM's approval process.

Final section 3207.12(e) provides that if a lessee expends an amount greater than the dollar expenditure required in that year on suitable development activities, the lessee may apply any excess payment to any subsequent year within that same 5-year extension period. This is similar to section 3208.14(a) of the previous regulations.

Except for the comment regarding inclusion of an inflation adjustment discussed above, we received no comments on sections 3207.10, 3207.11, and 3207.12 and have adopted them as proposed.

Final section 3207.13 exempts from the work requirements a lessee whose lease overlies a mining claim when: (1) The mining claim has a plan of operations approved by the appropriate Federal land management agency; and (2) Development of the geothermal resource would interfere with the mining operations. This implements 30 U.S.C. 1005(e). We received no comments on this section and have adopted it as proposed.

Final sections 3207.14 and 3207.15 implement the 5-year drilling and 35-year production extensions provided for in the statute at 30 U.S.C. 1005(g). As explained in the preamble to the proposed rule (71 FR 41548), we conclude that the language in the statute supports applying the 5-year drilling and 35-year production extensions to individual leases, as well as to leases under cooperative or unit agreements. We received no comments on these sections and have adopted them as proposed.

Final section 3207.14 addresses qualifications for a drilling extension. As explained in the preamble to the proposed rule (71 FR 41548–41549), a lessee who submits information showing that it has met the applicable requirements (work activities or payment or production in lieu thereof) will continue in the primary term through the 20th year. Because the statute provides for a drilling extension only if a lessee is engaged in qualifying drilling operations at the time the primary term ends (see 30 U.S.C. 1005(g)), final section 3207.14 allows the drilling extension only if: (1) A lessee was drilling over the end of the 20th lease year (when the primary term would end due to lease expiration); or (2) A lessee had failed to submit information showing that it had met the requirements for an extension of the primary term and was drilling over the end of a year subsequent to the 10th year (in which case the primary term would terminate due to a failure to comply with requirements). The section further specifies that to qualify for the drilling extension, the lessee must be drilling a well for the purposes of commercial production to a target that the BLM determines is adequate, based on the local geology and type of proposed development. The lease will expire if, at the end of the 5-year drilling extension, the lessee does not qualify for a production extension (i.e., if the lessee is not producing or utilizing the geothermal resource in commercial quantities—see discussion of final section 3207.15, below). We received no comments on this section and have adopted it as proposed.

Final section 3207.15 provides a production extension of up to 35 years for a lease that is: (1) Actually producing geothermal resources in commercial quantities; or (2) Has a well capable of producing geothermal resources in commercial quantities and the lessee is making diligent efforts to utilize the resource. This reflects the definition at 30 U.S.C. 1005(h) of ''produced or utilized in commercial quantities,'' which is also defined at section 3200.1. The section also specifies the types of information a lessee must provide to the BLM for the BLM to determine whether to grant a production extension. A lessee with a BLM-approved utilization plan allowing for seasonal operation would be eligible for the production extension as long as it was producing or utilizing the geothermal resource in commercial quantities during the periods that the utilization plan provided for operations. We received no comments on this section. In the final rule we added a cross-reference to section 3212.15 to make it clear that a lease will not terminate if it satisfies the conditions in that section.

Final section 3207.16 provides for a preferential right of renewal of a lease for a second term that is equal to the length of the primary term including the initial and additional extensions (a total of 20 years) plus the length of the production extension (up to 35 years) for a total renewal period of up to 55 years. A renewal could be granted under such terms and conditions as the BLM deems appropriate, if at the end of the production extension, the lessee is

producing or utilizing geothermal resources in commercial quantities and the lands are not needed for any other purpose. This provision implements 30 U.S.C. 1005(g). This section also specifies that the renewal term continues only so long as the lessee is producing or utilizing geothermal resources in commercial quantities. The term ''produced or utilized in commercial quantities'' is defined in proposed section 3200.1. We received no comments on this section and have adopted it as proposed.

Final section 3207.17 provides that leases committed to a unit agreement that would expire before the unit term would expire may be extended to match the term of the unit if unit development has been diligently pursued. Paragraph (a) of this section is virtually identical to the previous regulation at section 3208.10(a)(4), with a slight change in wording to remove any implication that the holder of the expiring lease must be the one to have diligently pursued unit development. Final sections 3207.17 (b) and (c) establish procedures for these circumstances. Under final section 3207.17 (b), to extend the term of a lease committed to a unit, the unit operator must send to the BLM a request for lease extension at least 60 days before the lease expires showing that unit development has been diligently pursued. In the final rule we amended the paragraph (b) to make it clear that BLM may require the operator to submit additional information prior to approving the application. Final section 3207.17 (c) provides that within 30 days after receiving your complete extension request, the BLM will notify the unit operator whether it approves the request. Under final paragraph (c), the 30 days will begin running after BLM has received all information necessary to act on the application.

Final section 3207.18 provides that a lease that is eliminated from a unit is eligible for an extension if it meets the requirements for such extensions. We received no comments on this section. In the final rule we removed the references to drilling and production extensions because lands eliminated from a unit may also be eligible for an initial or additional extension of the primary term.

Previous Subpart 3208—Extending the Primary Lease Term

Previous subpart 3208 is removed because under this final rule the subject of extensions of lease terms is addressed in subpart 3207 for leases issued: (1) After August 8, 2005 (other than for leases issued in response to applications that were pending on that date for which no election is made under section 3200.8(b)(1)); and (2) Before August 8, 2005, for which an election is made under section 3200.7(a)(2). Although removed from the CFR, the substance of previous subpart 3208 (43 CFR subpart 3208 (2004)) will continue to have vitality for leases issued before August 8, 2005, for which no election is made under section 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under section 3200.8(b)(1). As discussed in an earlier section of this preamble, leases in these two categories continue to operate under certain provisions of the rules in effect on August 8, 2005, unless they elect otherwise.

We received no comments on the removal of this subpart.

Previous Subpart 3209—Conversion of Lease Producing Byproducts

Previous subpart 3209 is removed because lease conversions that subpart covered are no longer allowable under the Energy Policy Act. We received no comments on the removal of this subpart.

Subpart 3210—Additional Lease Information

Final sections 3210.10 and 3210.11 on lease segregation remain substantively unchanged from the previous sections. We received no comments on these sections and have adopted them as proposed.

Final section 3210.12 references new lease size limits. In other respects, it is substantively unchanged from the previous section. The preamble to the proposed rule mistakenly implied that the processing fee for lease consolidations was new in this rule. In fact, that fee had been previously added by the minerals cost recovery rule (see 70 FR 58854 (October 7, 2005)). We received no comments on this section and have adopted it as proposed.

This final rule removes previous sections 3210.13, 3210.14, 3210.15, and 3210.16, all of which pertained to the previous diligent exploration requirements. Work requirements are addressed in the final rule in subpart 3207 for leases issued: (1) After August 8, 2005 (other than for leases issued in response to applications that were pending on that date for which no election is made under section 3200.8(b)(1)); and (2) Before August 8, 2005, for which an election is made under section 3200.7(a)(2). Despite the removal of these sections, the substantive terms of the cited sections (in the 2004 edition of the CFR) continue to apply to leases in effect before August 8, 2005, and leases issued on or after August 8, 2005, in response to applications pending on that date, unless the lessees elect under section 3200.7(a)(2) or section 3200.8(b)(1) to be subject to the regulatory requirements of this final rule. We received no comments on the removal of these sections.

Final section 3210.13 on leasing or locating minerals on a geothermal lease remains substantively unchanged from previous section 3210.17. We received no comments on this section and have adopted it as proposed.

Final section 3210.14, which provides that the BLM may readjust the terms and conditions of a lease, replaces previous sections 3210.18, 3210.19, and 3210.20 that related to the same topic. It implements 30 U.S.C. 1007, as revised.

One commenter objected to allowing the BLM to readjust the terms and conditions of a lease. The commenter stated that allowing such changes after the lease is issued creates uncertainty for the developer and could create financing issues.

We did not change the rule in response to this comment. As discussed below, these provisions are not substantively changed from the previous regulations (see previous sections 3210.18 and 3210.20). The statutory provision providing that the Secretary may readjust lease terms and conditions at not less than 10-year intervals and may readjust rentals and royalties at not less than 20-year intervals beginning 35 years after production (30 U.S.C. 1007) was not changed by the Energy Policy Act amendments, except for the removal of the 22.5 percent royalty cap previously included in 30 U.S.C. 1007(b). The final rule implements the new statutory provision.

Final section 3210.14(a) addresses readjustment of lease terms and conditions other than rentals and royalties; it replaces previous section 3210.18. With one exception, paragraph 3210.14(a) is substantively unchanged from previous section 3210.18. Previous section 3210.18 provided that once the BLM and the other agency reached agreement, the BLM would readjust the terms of the lease. It did not state, as the statute requires at 30 U.S.C. 1007(c), that the other agency must approve the readjustment. Final section 3210.14(a)(2) clarifies that the other agency must approve the proposed readjustment.

Final section 3210.14(b) addresses readjustment of rentals and royalties; it replaces previous section 3210.20(a). The previous 22.5 percent royalty cap for readjusted leases was removed from

the rules because that cap is no longer in the statute.

Final sections 3210.14(c), (d), and (e) implement the procedures of 30 U.S.C. 1007(b), and are somewhat different than the procedures in previous sections 3210.19 and 3210.20. Under previous sections 3210.19(a) and 3210.20(b), the BLM notified lessees in writing of proposed readjustments and provided the lessee 30 days to object in writing to the new terms. The previous rules provided further that if a lessee: (1) Did not object, the proposed new terms would become part of the existing lease; or (2) Did object, the BLM would issue an appealable final decision on the new terms and conditions. The previous rules, however, did not expressly mention certain concepts contained in the statute that are described below.

Under final sections 3210.14(c) and (d), the BLM will give a lessee a written proposal to readjust the rentals, royalties, or other terms and conditions of its lease. The lessee will have 30 days after receiving the proposal to file with the BLM an objection in writing to the proposed new terms and conditions. If the lessee does not object in writing or relinquish its lease, it will conclusively be deemed to have agreed to the proposed new terms and conditions. This concept, implied but not expressly stated in the previous rules, is taken directly from the statute. The BLM will then issue a written decision under final section 3210.14(d), setting the date that the new terms and conditions become effective as part of the lease. This decision will be in full force and effect under its own terms, and the lessee is not authorized to appeal the decision to the Department's Office of Hearings and Appeals.

We made a minor revision to proposed section 3210.14(c), changing the word ''adjust'' to ''readjust,'' to be consistent with language of the statute at 30 U.S.C. 1007 and the language of the other paragraphs of section 3210.14.

Final section 3210.14(e) establishes procedures for the situations where a lessee files a timely objection to the proposed readjustment, and is intended to implement a portion of 30 U.S.C. 1007(b) that was not addressed in previous regulations.

We revised the language of proposed section 3210.14(e)(1) in this final rule to correct an error in the proposed rule. The section as proposed referred only to ''readjusted rental and royalty terms'':

> If you file a timely objection in writing, BLM may issue a written decision making the readjusted rental and royalty terms effective no sooner than 90 days after we receive your objections, unless we reach an agreement with you as to the readjusted terms of your lease that makes such terms effective sooner.

However, the intent, as was clear from proposed paragraphs (c), (d), and (e) taken as a whole, was to refer to not just readjusted rental and royalty terms, but to all readjusted terms and conditions. Therefore, in this final rule we substituted the words ''readjusted terms and conditions'' for ''readjusted rental and royalty terms,'' and for clarity also revised the end of the sentence to refer to ''readjusted terms and conditions'' rather than the shorthand ''readjusted terms.'' Final section 3210.14(e)(1) thus reads:

> If you file a timely objection in writing, BLM may issue a written decision making the readjusted terms and conditions effective no sooner than 90 days after we receive your objections, unless we reach an agreement with you as to the readjusted terms and conditions of your lease that makes them effective sooner.

Under final section 3210.14(e)(2), if the BLM does not reach an agreement with the lessee by 60 days after receiving the lessee's objections, then either the lessee or the BLM may terminate the lease, upon giving the other party 30 days' notice in writing. This provision is contained in 30 U.S.C. 1007(b), but did not appear in the previous regulations. The final rule clarifies that a lease termination under paragraph (e)(2) does not affect a lessee's obligations that accrued under the lease when it was in effect, including those specified in section 3200.4.

Unlike a BLM decision under final section 3210.14(d), a lessee may appeal a BLM readjustment decision under final section 3210.14(e)(1). Final section 3210.15 addresses such appeals.

For consistency, we revised the language of proposed section 3210.15, which referred to ''lease terms and conditions, or rental or royalty rate'' to use the same phrase used in final section 3210.14(c): ''rentals, royalties, or other terms and conditions of your lease.''

Final section 3210.15 provides that if a lessee appeals the BLM's decision under section 3210.14(e)(2) to readjust rentals, royalties, or other terms and conditions of its lease, the decision will be effective during the appeal. If the lessee wins its appeal and the BLM must change its decision, the lessee will receive a refund or credit for any overpaid rents or royalties.

In summary, the BLM will provide a lessee 30 days to object to a proposed readjustment decision. If the lessee objects, the BLM may issue a written decision making the readjusted terms and conditions effective no sooner than 90 days after receiving the objection. A lessee will have 30 days to appeal that decision under Office of Hearings and Appeals regulations. In addition to the appeal process, the BLM and the lessee can attempt to negotiate an agreement within 60 days after the BLM receives the objection. If an agreement is reached, the appeal will be withdrawn. If an agreement is not reached, either the lessee or the BLM may terminate the lease on 30 days' notice in writing, even if an appeal is pending.

We revised sections 3210.14 and 3210.15 as discussed above to correct an error in the proposed rule and to make the wording consistent.

Final sections 3210.16 and 3210.17, relating to drainage of geothermal resources, are substantively unchanged from previous sections 3210.22 and 3210.23. We received no comments on these sections and have adopted them as proposed.

Subpart 3211—Filing and Processing Fees, Rent, Direct Use Fees, and Royalties

Final subpart 3211 incorporates changes made by the Energy Policy Act to lease rental rates, royalty rates, and minimum royalty requirements.

Final section 3211.10 addresses processing and filing fees. Paragraph (b) references existing 43 CFR 3000.12 for the amount of the fees. The BLM expects to update section 3000.12 from time to time to reflect actual costs associated with these activities. We received no comments on this section and have adopted it as proposed.

Final section 3211.11 establishes rental rates for geothermal leases. The new lease rental rates are taken directly from 30 U.S.C. 1004(a)(3)(A) and (B). The Energy Policy Act significantly changed rental rates from those in the previous regulations. The rental for new noncompetitive leases (that is, leases issued on or after August 8, 2005, other than leases issued in response to applications that were pending on that date for which no election is made under section 3200.8(b)(1)) remains at $1 per acre per year for the first 10 years; the rental for new competitive leases is $2 per acre the first year and increases from $2 per acre per year to $3 per acre per year from years 2 through 10. Starting with the eleventh year, the rental rate for all new leases increases to $5 per acre per year. Final section 3211.11(e) addresses fractional mineral interests in the same way as did previous section 3211.13.

Although we received no comments on proposed section 3211.11, we restructured it and added language to

clarify that for leases issued before August 8, 2005, for which no election is made under section 3200.7(a)(2), and for leases issued in response to applications pending on August 8, 2005, for which no election is made under section 3200.8(b)(1), the rental rate is the rate prescribed in the regulations in effect on August 8, 2005 (43 CFR 3211.10 (2004)). This is not a substantive change from the proposal, but is added as a convenience for persons trying to understand the rental structure for existing and new leases.

Final section 3211.12 is virtually the same as previous section 3211.12. The Energy Policy Act did not make any changes regarding to whom the rent is paid for the first year and subsequent years. We received no comments on this section and have adopted it as proposed.

Final section 3211.13 addresses when rental payments are due and replaces previous section 3211.11. The rule provides that rent is always due in advance. The MMS must receive annual rental payments for the upcoming year by the anniversary date of each lease year. If less than a full year remains on a lease, a lessee must still pay a full year's rent by the anniversary date of the lease. The payment of rent in advance is required by 30 U.S.C. 1004(a)(3). As this was also required in the original Geothermal Steam Act of 1970, there are no substantial changes to this portion of the provision. The reference in previous section 3211.11 to the automatic termination of leases by operation of law is not included in the new section because the statute has changed in this regard. Lease termination for non-payment of rental is addressed in final section 3213.14 of this rule and is discussed later in this preamble and in the preamble to the proposed rule at 71 FR 41557–41558.

One commenter requested a clarification of how rent will be credited towards royalty, as provided in section 3211.15, in light of the requirement of section 3211.13 that rent is due in advance. The commenter is referred to the MMS rule at 43 CFR 218.303 for this clarification. In addition to the explanation in the MMS rule text, the preamble to the proposed MMS rule provided a thorough explanation of the process, including examples (71 FR 41522). We did not change the rule in response to this comment.

Final section 3211.14 addresses whether a lessee must always pay rent on a lease. Although we received no comments on proposed section 3211.14, we restructured it and added language to clarify that only leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which no election is made under section 3200.8(b)(1)), and leases issued before August 8, 2005, for which an election is made under section 3200.7(a)(2), will always pay rental. As explained in the preamble to the proposed rule (71 FR 41550), the Energy Policy Act does not provide for payment of royalties in lieu of rent, or for minimum royalties during production. It provides that lessees will pay rental every year, and allows a credit of rents against royalties, as provided in this rule at section 3211.15.

The language we added to section 3211.14 explains that leases issued before August 8, 2005, for which no election is made under section 3200.7(a)(2), and leases issued in response to applications pending on that date for which no election is made under section 3200.8(b)(1), continue to be subject to the rental and minimum royalty provisions of the previous regulations (43 CFR subpart 3211 (2004)). While final sections 3200.7(a) and 3200.8(a) already provide that such leases are subject to the previous regulations in this regard, for clarity we included specific information in subpart 3211 as well. The previous regulations provided that the lessee pays rent until the lease achieves production in commercial quantities, or until lands in the lease are within the participating area of a unit agreement or cooperative plan, at which time the lessee pays royalties for lands within the participating area and rent for lands outside the participating area (see 43 CFR 3211.14, 3211.15, and 3211.17 (2004)).

Final section 3211.15, together with applicable MMS regulations, implement 30 U.S.C. 1004(e), which requires that the advance rental payments on new leases be credited towards royalty due on production in that lease year. The rule provides that a lessee may credit rental towards royalty under the MMS proposed regulations at 30 CFR 218.303. Under the statute the rental credit against royalty is allowed only for rent paid before the first day of the year for which the rental is owed. In other words, no credit is allowable for rent paid after the lease anniversary date, even if the lease is not terminated. Thus, although lessees are allowed to maintain their leases by paying rent plus a late fee within 45 days of the lease anniversary date, they may not credit such late rental payments against royalties.

Also, the Energy Policy Act does not provide for rental paid in excess of royalty to be carried over from one lease year as a credit against royalty for production in another year. Because rental is always due on a lease, the rental payment effectively becomes the equivalent of a minimum royalty payment that was required prior to the Energy Policy Act.

Final section 3211.16 provides that rental paid cannot be credited against fees owed for direct use of geothermal resources. This provision also appears in the final MMS regulations at 30 CFR 218.304. This section is based on the Energy Policy Act, which provides at 30 U.S.C. 1004(e) that annual rentals ''shall be credited to the amount of royalty that is required to be paid under the lease for that year.'' Please note the use of the word ''royalty'' in this provision of the statute.

Two commenters objected to the BLM's interpretation of 30 U.S.C. 1004(e) as providing for crediting rentals only against royalties and not against direct use fees. These commenters asserted that the statutory language was discretionary, that the BLM had chosen an unnecessarily strict and ''nit picking'' interpretation, and that the BLM's interpretation runs counter to the Energy Policy Act's goal of encouraging direct use development.

We did not change the proposed rule in response to these comments because we do not believe that Congress intended the word ''royalty'' at 30 U.S.C. 1004(e) to include direct use fees. As explained in the preamble to the proposed rule (71 FR 41551), a clear distinction exists in the statute between ''royalties'' and ''fees.'' Congress provided at 30 U.S.C. 1004(b) that fees are ''in lieu of royalties,'' thus differentiating the two. Direct use fee payments are different from royalty payments, and are therefore not included in the statutory provision for rental credits.

Final section 3211.17 establishes royalty rates on geothermal resources that are used in the commercial generation of electricity from or attributable to a geothermal lease. The Energy Policy Act (30 U.S.C. 1004(a)(1)(A) and (B)) provides for a royalty on the sale of electricity produced from geothermal resources ranging from 1 percent to 2.5 percent of gross proceeds for the first 10 years of production, and from 2 percent to 5 percent of gross proceeds thereafter (the MMS defines ''gross proceeds'' in 30 CFR part 206, subpart H.). The BLM interprets this section of the Energy Policy Act to apply to situations in which the lessee or its affiliate sells electricity generated by use of geothermal resources produced from or attributed to the lease. Although the statute establishes an allowable royalty range, actual royalty rates are to be

established by regulation (30 U.S.C. 1004(c)).

The royalty rates established under final sections 3211.17(a)(1)(i) and (ii), for geothermal resources that a lessee or its affiliate uses to generate electricity that it sells, are the same as the proposed rates: (1) 1.75 percent for the first 10 years of production from a lease; and (2) 3.5 percent for production in subsequent years. Final section 3211.17(a)(1)(iii) reiterates the language in the Energy Policy Act that the percentages in paragraphs (a)(1)(i) and (a)(1)(ii) must be applied to the gross proceeds from the sale of electricity, and specifies that gross proceeds must be determined in accordance with applicable MMS regulations.

Final section 3211.17(a) applies to leases issued on or after August 8, 2005, except for leases issued in response to lease applications that were pending on that date for which the lessee does not make an election under section 3200.8(b) to be subject to these new regulations. In this final rule, we changed the wording of proposed section 3211.17(a) to clarify that the election such a lessee may make is to be subject to all of the new rules; if no election is made, the lessee will be subject to the regulations in effect on August 8, 2005, with regard to the provisions specified at section 3200.8(a), including royalties.

The methodology for establishing royalty prescribed in 30 U.S.C. 1004(a)(1)(A) and (B) represents a significant change from the way royalty was previously determined. For leases issued before August 8, 2005, that do not convert royalty terms under section 3212.25, and for leases issued in response to applications that were pending on August 8, 2005, that do not make an election under section 3200.8(b)(1), a royalty rate in the range from 10 percent to 15 percent of the value of the geothermal resource will apply. Historically, arm's-length sales of geothermal resources from a lessee to a third party utility were common and the arm's-length transaction established the value of the resource. For most situations where there was no sale of geothermal resources (as is the case for virtually all existing leases), the value of the geothermal resource was artificially derived using the ''netback'' method developed by the MMS, a method that in practice has often resulted in almost no royalty being paid and has been cumbersome for both the MMS and the lessees. For example, the Geysers Geothermal Field lessees informed the MMS that the netback method was unworkable, and negotiated with the MMS to adopt a simpler ''percent of gross proceeds'' method instead.

The Energy Policy Act simplifies the way in which royalty is valued by basing royalties on a percentage of gross proceeds derived from the sale of electricity. Section 1004(c) of the Act requires that in establishing royalty rates the Secretary must seek to provide a simplified administrative system, encourage new development, and achieve revenue neutrality for a period of 10 years when compared to the valuation methods in the previous regulations. The BLM has interpreted the revenue-neutrality requirement to require the calculation of a royalty rate that achieves program-wide revenue neutrality for the first 10 years of production when compared to royalty revenues that would have been received during those 10 years under the previous netback system. Under this interpretation, this revenue-neutrality requirement does not apply to the royalty rate after the first 10 years of production.

In establishing the proposed royalty rates, the BLM relied on the rates recommended by the MMS RPC Subcommittee. The RPC, established under the Federal Advisory Committee Act, makes recommendations on issues related to royalties on Federal resources and consists of representatives from Federal and state governments, industry, and the public at large. The Subcommittee was formed to address the MMS's geothermal royalty valuation regulations in an effort to simplify the language and reduce administrative costs to the geothermal industry. The Subcommittee was composed of members from one industry association, several geothermal producers, and two of the major states affected. The MMS and BLM representatives served as technical advisors to the Subcommittee.

The Subcommittee asked the MMS to calculate the equivalent gross proceeds rates for all geothermal plants paying royalties under the netback method in 2003 and 2004. The MMS determined that the equivalent gross proceeds rate was 3.64 percent in 2003, and 3.94 percent in 2004, with an average of 3.79 percent for the 2 years (Royalty Policy Committee, Geothermal Valuation Subcommittee Report, May 2005 (''RPC Report''), page 10).

The Subcommittee recommended rates of 1.75 percent for the first 10 years of production, and 3.5 percent thereafter. The Subcommittee reported that, ''[u]nder the netback method, historically during the beginning years of an electrical generation project (between 1–10 years), lessees pay a very low percentage of the gross proceeds from the sale of electricity and in later years of the project (after 10 years), the percentage increases * * *. The recommended proposal [1.75 percent and 3.5 percent] * * * attempts to replicate this historical trend under the netback method over the long term.'' (RPC Report, page 10). The report stated that ''[f]or new leases, the proposal is expected to increase revenues over the next 10 years and may be revenue neutral over the long run.'' (RPC Report, page 11). However, it went on to state that there was ''[r]isk of a negative revenue impact for the government if electricity prices are higher and/or costs are lower than anticipated; and risk of negative impact on companies if prices are lower and/or costs higher than anticipated.'' (RPC Report, page 12).

The BLM retained a contractor, Advanced Resources International, Inc. (ARI), to assess whether the proposed 1.75 percent royalty rate was consistent with the statutory requirement for revenue neutrality over a 10-year period. ARI recently completed for the BLM a technical memorandum entitled ''Geothermal Development on Federal Lands: Projection of Royalty Impacts Resulting from the Energy Policy Act of 2005'' (ARI Report). The ARI Report is publicly available and has been included in the Administrative Record for this rulemaking. A summary of the ARI Report follows, much of it derived from the ARI Report Executive Summary.

The ARI developed an analysis to compare the Energy Policy Act gross proceeds royalty rate method with the netback method to determine under what conditions the two would be revenue neutral. Focusing on the western states of California, Nevada, Utah, and Idaho, the analysis considered technology (binary and flash plants), potential areas of development, electricity prices and markets, plant sizes relative to the technology used, and financial parameters such as capital costs, operating and maintenance costs, and discount rate. The analysis assumed a 30-year project life. ''Type'' projects were developed based on these parameters. To obtain a programmatic view, the various states were weighted based on where development might occur (California was divided into two domains). ARI calibrated (checked) the analysis using historical data.

The ARI modeled nine programmatic cases for analysis to capture a spectrum of potential development on BLM lands. The differences between the various cases derive from adjusting those parameters to which the model was most sensitive, *i.e.*, the relative amount of binary plant development (as

compared to the total of binary plus flash plant development), future electricity prices, and capital costs. Scenarios modeled include ''base,'' ''low,'' ''intermediate,'' ''targeted'' (to achieve a 1.75 percent royalty rate during the first 10 years of production) and ''high'' cases. For each case, the model derived a revenue-neutral royalty rate for the first 10 years of production (or, for the targeted cases, adjusted appropriate parameters that would result in the targeted rate), as well as an accompanying revenue-neutral royalty rate for production after the first 10 years. All parameters used in the modeling were based on empirical data. The ARI Report did not recommend any particular set of royalty rates, but concluded instead that ''[i]t is reasonable to expect that all scenarios modeled in the cases could be achievable (including targeted scenarios) depending upon geothermal resources, future market conditions and technology'' (ARI Report, page 1).

The ARI Report base case assumes: (1) 65 percent of future geothermal development will use binary technology; (2) future electricity prices will remain flat (incorporating price supports in the applicable geographic domains under the California Renewable Energy Program); and (3) capital expenditures for plant construction (CAPEX) will be an average of data published by the Geothermal Energy Association (explained in ARI report, section 2.2.7, page 7). The ARI Report includes an explanation of all the parameters the model uses.

The ARI also performed an historical analysis of a sample of existing geothermal leases paying royalties under the netback system to determine the equivalent royalty they paid during the first 10 years of their production (see the ARI Report, Section 2.3 on p. 8). The BLM and the MMS supplied electricity sales and royalty revenue data to the contractor for nine non-Standard Offer 4 contracts for Nevada. (Standard Offer 4 contracts had a unique price structure, and would not be applicable to future geothermal leases.) This sample was based on the data that was readily available to the BLM. ARI examined this data for the first 10 years of the project lives to determine the actual effective netback royalty rate. The binary plants showed an effective royalty rate of 0.61 percent; for flash technology, the effective royalty rate was 3.52 percent. For this portfolio of binary and flash technologies, the effective royalty rate for the first 10 years of project lives was 1.11 percent as a weighted average. ARI compared these historical percentages to the percentages derived when the same data was run in its model and found that the percentages were very close.

After thorough consideration of both the RPC Report and the ARI Report, the BLM determined that its proposed royalty rate of 1.75% for the first 10 years of production meets the statutory requirement for revenue neutrality. Both the RPC Report and the ARI Report support the conclusion that estimates of revenue neutrality are extremely sensitive to potential changes in electricity prices and capital expenditures, and the ARI Report indicated that the estimates are also very sensitive to the relative mix of geothermal technology that will be employed in the future. None of these variables can be predicted with absolute accuracy. Based on the professional judgment of the BLM geothermal program staff, the model assumed that binary technology would account for no less than 50% of new geothermal plants; the assumed percentage of binary plants in the cases analyzed in the model ranged from 50% to 65%. Regarding capital costs, while the model's base case based its capital expenditures estimate on an average of published data, the data showed that actual capital expenditures varied from that average by up to a third or more (ARI Report, page 16 n.17). The assumed capital expenditures in the cases analyzed in the model deviated from the base case by no more than 12%. The ARI Report cited to a recent article on a geothermal operation in Alaska that provides some evidence that geothermal capital costs could decline if operators begin substituting mass-produced parts (ARI Report, page 16 n. 24). Electricity prices, too, cannot be predicted with accuracy, especially considering the increasing prevalence of government-mandated use of renewable energy sources such as geothermal energy. As noted, California already has a Renewable Energy Program that contains price support provisions (which the model took into account), and Nevada is considering draft legislation that could enhance prices for renewable energy in the future.

The ARI Report demonstrates the impact of potential changes in any of these variables. For example, Targeted Case A (ARI Report, page 1, Table, column 5), changed predictions for two of the three parameters just discussed: It changed the binary plant proportion from 65% to 50%, and lowered the capital expenditures prediction by 8%. It used the same electricity price prediction as the base case. If future geothermal production met those parameters, the model shows that the revenue-neutral royalty rate for the first 10 years of production would be 1.76% and the revenue-neutral rate for years 11–30 would be 3.57%. These rates are nearly identical to the rates recommended by the RPC and proposed by the BLM in its proposed rule.

The modeling exercise makes clear that a revenue-neutral royalty rate is not simply one number that can be determined with mathematical certainty, but instead could be within a range of rates, depending on reasonable assumptions as to what the future holds. The ARI Report shows that other changes in the parameters, corresponding to other potential scenarios for future development, result in different revenue-neutral royalty rates, some higher and some lower than the BLM's proposed rates. The four targeted scenarios show that the 1.75% royalty rate for the first 10 years of production could result in revenue-neutrality in a number of different future scenarios. As noted above, all parameter variations used in the model were based on empirical data, and the ARI report concluded that ''[i]t is reasonable to expect that all scenarios modeled in the cases could be achievable (including targeted scenarios) depending upon geothermal resources, future market conditions and technology'' ARI Report, page 1.

The 1.75% rate is clearly within the reasonable range of rates that would meet the statutory mandate to seek revenue neutrality for the first 10 years of production. While the BLM's interpretation of the statute is that there is no mandate of revenue-neutrality after the 10th year, the 3.5% rate for subsequent years is, nevertheless, also within the reasonable range of revenue-neutral rates. These rates have the additional advantage of being recommended by the RPC Subcommittee, which carefully gathered input from many interested parties. Consequently, the BLM believes that these rates, to which representatives of the geothermal industry agreed, will also work to encourage geothermal development.

As noted above, the royalty rate required by the Energy Policy Act, at 30 U.S.C. 1004(a)(1)(A), requires a royalty of 1 percent to 2.5 percent of gross proceeds from the sale of electricity ''during the first 10 years of production under the lease.'' The BLM interprets this language to mean that the 10-year period to which the 1.75 percent royalty rate applies starts during the month for which commercial operation is first achieved, and continues for 120 consecutive months, unless a suspension of operations and

production is granted under subpart 3212.

Final section 3211.17(a)(2) sets the royalty rate for the arm's-length sale of resources at 10 percent of gross proceeds from that sale. The Energy Policy Act is silent regarding the situation where the lessee sells the resource to an unaffiliated purchaser that produces electricity, rather than selling the electricity itself. To address these situations, the BLM is using the recommendations found in the RPC Report (page 9) which recommended that the lessee ''pay a royalty on the geothermal resources sold under arm's-length conditions to a plant that generates electricity based on a royalty rate in the lease multiplied by the gross proceeds the lessee derives from the sale of the geothermal resources.'' The Geothermal Steam Act, prior to the amendments of the Energy Policy Act, required a royalty rate of 10 to 15 percent, and current BLM practice is to issue all leases with a royalty rate of 10 percent. Section 2 of the standard lease terms listed on the BLM Form 3200–24, ''Offer to Lease and Lease for Geothermal Resources,'' sets the royalty rate at 10 percent. The 10 percent royalty rate is thus the current practice, and the Subcommittee Report concluded that it would cause ''[n]o change in royalty valuation.''

While the 10 percent royalty rate in the case of an arm's-length sale of resources for the commercial generation of electricity may appear to require higher payments by a lessee than the 1.75 and 3.5 percent that are required for ''no-sales'' situations in section 3211.17(a)(1), the actual amount of royalty paid will be roughly equivalent. This is because the 10 percent rate applies to the gross proceeds from the sale of the geothermal resource, whereas the 1.75 and 3.5 percent rates for electrical generation apply to the gross proceeds from the sale of electricity. The electricity generated represents a refined product with a much higher value than the heat resource entering a power plant. Therefore, 1.75 and 3.5 percent of a high-value product will be roughly equivalent to 10 percent of a lower value product. Because the proposed 10 percent royalty on the gross proceeds from an arm's-length sale of resource required by section 3211.17(a)(2) is the same as the royalty that would be required under existing lease terms, the provisions of this paragraph are revenue neutral.

We received no comments on section 3211.17(a) and, except for the clarification change discussed above, have adopted it as proposed.

Final section 3211.17(b) establishes the royalty rates for leases issued before August 8, 2005, where the lessee chooses to convert the royalty terms of the lease. As discussed earlier, the royalty rates will continue under the existing terms of such leases unless a lessee converts to the royalty terms of the new statute under final section 3212.25. Eligibility for and procedures for such conversions are discussed later in this preamble in the discussion of subpart 3212.

In this final rule we revised section 3211.17(b). For clarity, we separated proposed section 3211.17(b)(1) into two parts. Final section 3211.17(b)(1) addresses leases that have produced geothermal resources for the commercial generation of electricity, or to which geothermal resource production for the commercial generation of electricity has been attributed. Final section 3211.17(b)(2) addresses leases that have not produced geothermal resources, and to which geothermal resource production for the commercial generation of electricity has not been attributed. We replaced the word ''previously'' with the phrase ''prior to submitting a request to modify the royalty rate terms of the lease under section 3212.26.'' We moved the information that was contained in proposed section 3211.17(b)(2), regarding application of MMS rules, to final section 3211.17(b)(1)(i) and (ii). These paragraphs are further discussed below.

Conversion of the royalty terms of existing geothermal leases is governed by Section 224(e) of the Energy Policy Act. That section does not make the royalty rate ranges in 30 U.S.C. 1004(a)(1) applicable to existing leases that convert to new royalty terms. Instead, the royalty conversion language in Section 224(e)(1)(B) of the Energy Policy Act requires that except for leases where the geothermal resource is used for a direct use to which a fee schedule applies, royalties are to be computed on a percentage of the gross proceeds from the sale of electricity. Under the statute, the royalty rate is to be set at the percent of gross proceeds to ''yield total royalty payments equivalent to payments that would have been received for comparable production under the royalty rate in effect for the lease before the date of enactment * * * .''

In the final rule, we divided converting leases that have already produced geothermal resources for the commercial generation of electricity into two categories under section 3211.17(b)(1). Under section 3211.17(b)(1)(i), where a lessee or its affiliate uses geothermal resources to generate and sell electricity, the BLM will establish a royalty rate by determining a percentage of gross proceeds from the sale of electricity that it expects will result in the same total amount of royalty to be paid over the life of the lease as would be paid under the current valuation method. The determination of such a royalty rate will be done on a case-by-case basis and will be based on the information submitted by the applicant. We added the words ''over the life of the lease'' to the regulatory text to clarify that the statutory phrase ''total royalty payments'' means total payments during the existence of the lease, and not just during a particular period of production.

In this final rule, we added the category covered by section 3211.17(b)(1)(ii), where a lessee or its affiliate sells geothermal resources at arm's length to a purchaser who uses those resources to generate electricity. We provided that in such a case, the royalty rate is the rate specified in the lease instrument. This is a change from the proposed rule, in which we proposed to establish a revenue neutral royalty rate for this category of leases by applying to the gross proceeds of the purchaser's eventual sale of electricity a rate that would result in the same total amount of royalty as would be paid under the current valuation method. In reviewing MMS's draft final rule, it was discovered that the MMS rule would apply the rate that BLM sets to the gross proceeds from the lessee's sale of the resource rather than to the gross proceeds from the purchaser's sale of electricity.

As discussed above, for converting leases, section 224(e)(1)(B) of the Energy Policy Act requires that royalties be computed on a percentage of the gross proceeds from the sale of electricity, to achieve over the life of the lease ''total royalty payments equivalent to payments that would have been received for comparable production under the royalty rate in effect for the lease'' before enactment of the amendments. Under the previous BLM and MMS rules, arm's-length sales of geothermal resources from a lessee to a third party utility established the value of the resource. There was no need to artificially derive a value for the geothermal resource through the ''netback'' method. Thus, any successful method of applying a royalty rate to the gross proceeds of electricity generated by the purchaser in an attempt to achieve royalty payments equivalent to existing payments for arm's-length resource sales would result in the same outcome as applying the rate in the

existing lease to the gross proceeds from the sale of the resource. Because the existing method achieves the equivalent royalty payments mandated by the statute, we determined that for the sale of the geothermal resource under arm's-length contracts this method complies with the statute.

A royalty rate modification under section 3212.25 will thus have no immediate effect on an existing lessee that only sells geothermal resources to commercial generators of electricity. However, if such a lessee elects to be subject to all of the new regulations under section 3200.7(a)(2), it must obtain a royalty modification, which requires that the rate be addressed in section 3211.17.

In light of this revision of the final rule clarifying that MMS will apply the royalty rate for converting leases to the gross proceeds from the sale of the resource and not to the gross proceeds of electricity generated by the purchaser, it is no longer necessary that a request to modify royalty terms under section 3212.26 include documentation that a lessee selling the resource has access to the purchaser's gross proceeds derived from the sale of electricity. We therefore did not include that provision in final section 3212.26(a)(2).

Final section 3211.17(b)(2) establishes the royalty rates for leases that elect to convert to the royalty terms of the Energy Policy Act, but have never produced geothermal resources. In these cases, because the BLM will have no data on which it could base a determination of a revenue-neutral royalty rate, it will assign the royalty rates in final section 3211.17(a)(1) (1.75 percent for the first 10 years and 3.5 percent thereafter) or 3211.17(a)(2) (10 percent of the gross proceeds from the sale of the resource), whichever is applicable. In this final rule we added the reference to section 3211.17(a)(2) to account for arm's length sales of the resource. Because the royalty rates in section 3211.17(a) were derived to be revenue neutral, the BLM has concluded that this meets the intent of section 224(e)(1)(B) of the Energy Policy Act.

One commenter stated that in proposed section 3211.17, ''BLM sets the royalty rate for leases that previously did not produce geothermal resources for commercial generation of electricity from Class II and III leases at 1.75 percent'' and objected that no explanation was offered as to why the 1.75 percent rate would result in the same level of royalty revenue.

First, we want to clarify that the proposed rule at section 3211.17(b)(1) and the final rule at section 3211.17(b)(1)(ii) sets the royalty rates for leases issued before August 8, 2005, that elect to convert to the royalty terms of the Energy Policy Act, but have never produced geothermal resources for the commercial generation of electricity, not at 1.75% for the life of the lease, but at 1.75% for the first 10 years of production, and 3.5% thereafter, as provided at sections 3211.17(a)(1)(i) and (ii). These are the same royalty rates that will be applied to new leases.

In establishing a process for setting royalty rates for existing leases that elect to convert to the royalty terms of the Energy Policy Act, the BLM distinguished between existing leases that have produced and those that have not produced. Under final section 3211.17(b)(1)(i), for existing leases that have a history of production, the BLM will determine on a case-by-case basis a royalty rate that will meet the statutory requirements. Under final section 3211.17(b)(1)(2), for existing leases that have never produced, the BLM will apply the same royalty rates that it will apply to new leases. The reason for this distinction is that those leases that have produced geothermal resources for the commercial generation of electricity, and which have been subject to royalty payments under the netback method, can provide enough data to perform a case-specific revenue analysis. From this analysis, a new royalty rate can be established for that case that will yield an equivalent amount of royalty. In contrast, for leases that have never produced electricity and that have never paid royalty under the netback method, there are no data available for a revenue analysis. Actual data are especially critical for royalty calculations under the netback method, because the calculation is highly dependent on the type of facility that is built and requires very specific input data, such as operation and maintenance costs, capital investment, bond yield rates, electricity sales price, and transmission line costs. The BLM concluded that equivalent royalty calculations for leases that have never produced would be unacceptably speculative. The BLM believes that the royalty rates applicable to new leases, established in section 3211.17(a)(1), which are intended to be revenue neutral on a programmatic basis, are a reasonable revenue-neutral surrogate and should apply in this situation. We did not change the rule in response to this comment.

The same commenter said that ''the proposed rules imply that the BLM prescribed rates are not applicable to a Class I lease that previously produced geothermal resources which is being converted to a Class II or Class III lease'' and suggested that the BLM add specific language to section 3211.17 to ensure that the BLM's rates are still applicable.

The commenter appears to be confused regarding how the BLM will determine royalty rates for leases issued before August 8, 2005, that have produced geothermal resources and elect to convert to the royalty terms of the Energy Policy Act. The statute does not allow the BLM simply to apply to such leases the royalty rates that will apply to new leases. Section 224(e) of the Energy Policy Act provides an entirely different process for existing lessees that wish to convert to the new royalty terms than the process provided for new leases. Section 224(e)(1)(B) requires ''that royalties be computed on a percentage of the gross proceeds from the sale of electricity, at a royalty rate that is expected to yield total royalty payments equivalent to payments that would have been received for comparable production under the royalty rate in effect for the lease before'' August 8, 2005 (i.e., under the ''netback'' system). To implement this requirement, the BLM proposed at section 3211.17(b)(1) that it would seek to establish a rate to yield total royalty payments equivalent to those that would have been paid for that lease under the previous system, by which it meant it would determine the rates on a case-by-case basis. The BLM decided that a case-by-case system of determining rates was necessary because equivalent rates under the netback system are highly individualistic and must take into account the specific situation of each lease. In response to this comment, we added language to section 3211.17(b)(1)(i) to clarify that royalty rates for converting leases will be determined on a case-by-case basis.

One commenter stated that the lack of a cap on the royalty rates in section 3211.17(b) was inconsistent with the Energy Policy Act, ''which set ranges for royalties (section 224(a)(1)) and which govern all federal leases including those being readjusted.'' The commenter also stated that a cap would be consistent with the recommendations of the RPC.

We disagree that the statute provides for a cap in determining modified royalty rates under Section 224 of the Energy Policy Act. Section 224(a)(1), cited by the commenter, which provides both a floor and a cap for royalty rates, amends Section 5 of the Geothermal Steam Act, at 30 U.S.C. 1004. Section 224(a)(2), which also amends 30 U.S.C. 1004, provides that in establishing royalty rates under that section, the Secretary must seek, among other things, to achieve a revenue-neutral royalty rate over a 10-year period. Thus,

the floor and cap do apply to the establishment of revenue-neutral rates for new leases under 30 U.S.C. 1004. However, Section 224(e)(1)(B) of the Act, which as discussed above, mandates a specific approach to modifying royalty rates for existing leases, does not amend 30 U.S.C. 1004; it is, in fact, a separate uncodified amendment. Therefore, the establishment of royalty rates under Section 224(e)(1)(B) is not subject to the royalty rate range provided at Section 224(a)(1) and codified at 30 U.S.C. 1004. We note, moreover, that if the cap at 30 U.S.C. 1004 did apply to modified existing leases, the floor would also apply. Because of the structure of the previous netback system, we believe it is likely that many existing leases for which a modified royalty rate is determined under Section 224(e)(1)(B) may have an equivalent royalty rate under the 1% floor. Thus it is likely that the lack of a specific range could work to the advantage of lessees.

Final section 3211.17(c) addresses royalty rates for existing leases and leases issued in response to applications pending on August 8, 2005, that choose not to convert to the royalty terms of the Energy Policy Act. The royalty rates for these leases have already been established in existing lease instruments. This paragraph does not establish new requirements, but is included for completeness and convenience of the reader. In this final rule, we changed the wording of proposed section 3211.17(c) to clarify that the election that may be made by lessees of leases issued in response to applications pending on August 8, 2005, is to be subject to all of the new rules. If no election is made, the lessee will be subject to the regulations in effect on August 8, 2005, with regard to the provisions specified at section 3200.8(a), including royalties. Except for the changes discussed above, we adopted sections 3211.17(b) and (c) as proposed.

Final section 3211.18 implements 30 U.S.C. 1004(b) and Section 224(e)(1)(A) of the Energy Policy Act and addresses the royalty rates for the direct use of production from or attributable to a geothermal lease.

Final section 3211.18(a) establishes rates for leases issued after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee does not make an election under section 3200.8(b)), and for existing leases whose royalty terms are modified under section 3212.25. We revised the language of this section to clarify that the election that may be made by the lessee of a lease issued in response to an application that was pending on August 8, 2005, is to be subject to the new regulations. If no election is made, the lessee will be subject to the regulations in effect on August 8, 2005, with regard to the provisions specified at section 3200.8(a), including royalties.

Final section 3211.18(a)(1) provides that a royalty rate does not apply to the direct use of geothermal resource production that a lessee or its affiliate does not sell. Instead, a lessee will pay direct use fees according to a schedule published by the MMS (see the MMS regulations at 30 CFR 206.356 for the schedule). The direct use fee schedule applies to traditional direct uses such as greenhouse heating, space heating, and industrial heating applications, as well as to non-commercial generation of electricity as described under final section 3211.18(c), below.

Under final section 3211.18(a)(2), a lessee who produces a geothermal resource and sells it at arm's length to a purchaser who uses it for direct use purposes is required to pay a royalty of 10 percent, which will be applied to the gross proceeds derived from the arm's-length sale under applicable MMS regulations at 30 CFR part 206, subpart H. Section 3211.18(a)(2) maintains the royalty rate of 10 percent that was found in previous 43 CFR 3211.10.

The Energy Policy Act does not address situations where a lessee sells geothermal resources in an arm's-length sale to a purchaser who utilizes such resources for direct use purposes. Under 30 U.S.C. 1004(b)(1)(B), the required schedule of fees applies only to those situations where the lessee ''does not sell'' geothermal resources. Because the royalty provisions in section 1004(a)(1) of the Act specifically refer to electrical generation, they do not cover sale for direct use, either. To the extent that a gap exists in the statute, we have filled that gap with respect to new leases under the rulemaking authority of 30 U.S.C. 1023.

Similarly, a gap exists under the royalty conversion provisions of Section 224(e)(1) of the Energy Policy Act. Section 224(e)(1)(A) establishes the royalties for converted leases that meet the requirements of 30 U.S.C. 1004(b), i.e., leases whose geothermal resources are used for direct use purposes where no sale of the geothermal resources occurs. Section 224(e)(1)(B) of the Energy Policy Act establishes the royalties for converted leases that involve the sale of electricity (royalties are to be based on a percentage of gross proceeds from the sale of electricity). Neither subparagraph establishes the royalty rate for converted leases where a lessee sells geothermal resources in an arm's-length sale to a purchaser who utilizes such resources for direct use purposes. Thus, under final section 3211.18(a)(2), we filled that gap with respect to converted leases under the rulemaking authority of 30 U.S.C. 1023. The rate BLM has established under this final rule is the same as the rate for such sales under the previous regulations and is the same as for arm's length sales of geothermal resources for electrical generation under these regulations.

The Energy Policy Act, at 30 U.S.C. 1004(b)(3), requires that if a state, tribal, or local government is the lessee and uses geothermal resources without sale and for public purposes other than commercial generation of electricity, the Secretary must charge only a nominal fee for use of the resource. Final section 3211.18(a)(3) addresses this provision of the statute by referencing the MMS rules that implement this provision (see 30 CFR 206.366). The fee that the MMS sets must be paid in addition to the rental due on the lease.

Final section 3211.18(b) clarifies that for leases issued before August 8, 2005, that do not convert the royalty terms of their lease, and for leases issued in response to applications pending on August 8, 2005, where the lessee does not make an election under section 3200.8(b), the royalty rate is established in the lease form and those leases will continue to be subject to existing royalty rates. This paragraph does not establish new requirements, but is included for completeness and convenience of the reader. We amended the language of this section to clarify that the election that may be made by the lessee of a lease issued in response to an application that was pending on August 8, 2005, is to be subject to the new regulations. If no election is made, the lessee will be subject to the regulations in effect on August 8, 2005, with regard to the provisions specified at section 3200.8(a), including royalties.

Final section 3211.18(c) clarifies the BLM's interpretation of the meaning of non-commercial generation of electricity. If a lessee generates electricity that is used solely for the operation of a direct use facility and does not sell the electricity, this is considered a direct use subject to the direct use fee schedule.

The Energy Policy Act, at 30 U.S.C. 1004(b)(1), restricts the use of the direct use fee schedule to situations where the resource is not sold and is used ''for a purpose other than the commercial generation of electricity.'' As discussed earlier, the statute requires a royalty based on a percentage of gross proceeds for commercial generation of electricity

(30 U.S.C. 1004(a)(1)(A) and (B)). However, the statute does not expressly address non-commercial generation of electricity, such as electricity generated to run fans, pumps, lights, automatic valves, and instrumentation in direct use facilities. If electricity is not sold, there are no gross proceeds on which to base a royalty. The BLM does not believe the intent of the Energy Policy Act is to allow the use of Federal geothermal resources to generate non-commercial electricity without compensation. Therefore, as a permissible interpretation of the statute, the BLM construes the non-commercial generation of electricity to be a direct use of the resource subject to the direct use fee schedule.

One commenter objected to the imposition of direct use fees under section 3211.18 in situations where the geothermal resource was cascaded from an electrical generation project that already pays royalty.

The BLM rejects the comment. The Energy Policy Act, at 30 U.S.C. 1004(b)(1), requires a direct use fee ''for geothermal resources, that a lessee or its affiliate—(A) uses for a purpose other than the commercial generation of electricity; and (B) does not sell.'' The definition of geothermal resources includes heat or other associated energy found in geothermal formations. In applications where hot water or steam is first sent through an electrical generation facility and then into a direct use facility, the heat entering the direct use facility is still considered a geothermal resource. In other words, the heat entering the direct use facility is ''left over'' heat from the geothermal formation that was not used by the electrical generation facility. It thus meets the definition of a geothermal resource and is used for a purpose other than the commercial generation of electricity. Therefore, if it is not sold, it is subject to direct use fees. Under the previous regulations as well (see previous section 3211.16), the BLM assessed royalties on all uses of heat energy, including those that could be characterized as ''cascaded.'' We did not change the rule in response to this comment.

Final section 3211.19 addresses the royalty rate on byproducts derived from geothermal resources produced from or attributable to a geothermal lease. We restructured this section in the final rule to differentiate between leases that will be governed by these final regulations and those that will remain subject in part to the previous regulations. Final section 3211.19(a)(1) implements 30 U.S.C. 1004(a)(2) by setting the proposed royalty rate on byproducts listed in the first section of the Mineral Leasing Act (MLA), 30 U.S.C. 181, to be the same as the royalty rates in the MLA and implementing regulations, for geothermal leases subject to these final regulations. We deleted the list of byproducts included as examples in the proposed rule. The list mistakenly included oil and gas, which are excluded under the definition of ''byproducts'' at final section 3200.1. All minerals listed at 30 U.S.C. 181 that are not excluded under the definition of ''byproducts'' and are physically possible to produce as geothermal byproducts are covered by this subsection. We also deleted the example in paragraph (a)(1) of this section because it is not necessary.

In the proposed rule at section 3211.19(b), we proposed maintaining the previous royalty rate of 5% on byproducts that are not listed in the MLA, such as gold, silver, zinc, etc. The rationale for this was that there was an apparent gap in the statute; in its amendments to 30 U.S.C. 1004, the Energy Policy Act had removed the language of previous 30 U.S.C. 1004(b) that established royalties of up to 5% for such byproducts. We stated that, because it was not clear whether Congress intended to establish such royalties at zero, or to leave it to the Secretary to set an appropriate royalty rate for such byproducts, we proposed a 5% royalty rate relying on the general policy under Section 102(a)(9) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1701(a)(9), that we should receive fair market value for the use of the public lands and their resources. In the proposed rule we solicited comments on whether the rate was fair and based upon an acceptable interpretation of the statute.

We received one comment objecting to the 5% royalty on byproducts that are not listed in the MLA. The commenter stated that Congress, by narrowing the scope of the language in the Geothermal Steam Act regarding royalties on byproducts, showed a clear intent not to impose a royalty on byproducts that would not be royalty-bearing if they were produced from the public lands, in accordance with testimony that industry representatives had presented on this issue. We accept this comment. After further consideration, we agree that because Section 228 of the Energy Policy Act specifically deleted the former statutory language that provided for a royalty on all byproducts and substituted language that limits royalties on byproducts to those listed in the MLA, the better interpretation is that Congress intended to eliminate royalties on byproducts that are not listed in the MLA. We therefore revised the final rule to reflect this interpretation.

Final section 3211.19(a) implements the Energy Policy Act amendments with regard to leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which no election is made under § 3200.8(b)(1)), and leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2). Final section 3211.19(b) provides that for leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1), the royalty on all byproducts is the rate prescribed in the lease instrument, or if none is prescribed in the lease instrument, the rate prescribed in the previous regulations at 43 CFR 3211.10(b) (2004).

Final section 3211.20 provides that a lessee may credit advanced royalty toward royalty due under the MMS regulations at 30 CFR 218.305(c). This provision, and the MMS rule, implement 30 U.S.C. 1004(f)(2), which allows for crediting advanced royalty payments towards royalty due on production. We received no comments on this section and have adopted it as proposed.

In the proposed rule, we proposed removing previous section 3211.17 (''When do I owe minimum royalty?'') because minimum royalties no longer apply to new leases. In this final rule, we decided to include a section with the same title, final section 3211.21, with a paragraph (a) explaining that leases under the new regulations do not owe minimum royalty, and a paragraph (b) providing that minimum royalties do apply to certain older leases and incorporating the substance of previous section 3211.17. This section has been added for convenience and to facilitate understanding of when minimum royalties continue to apply. This section is not intended to add new requirements.

Final section 3211.21(b) clarifies that the leases to which that paragraph applies owe minimum royalty either when the royalty on actual production would be less than $2.00 per acre or when the lease is in a period of non-production, as long as the lease remains in effect. Previous section 3211.17 implied, but did not clearly state, that minimum royalties apply to periods of non-production. However, previous section 3211.14 stated that once a lease achieved production in commercial quantities it would begin paying royalties instead of rent. There is no

exception to this obligation to pay regular or minimum royalty instead of rent. The BLM has always charged minimum royalties in periods of non-production, as well as in periods of low production. We have made this explicit in this final regulation.

Subpart 3212—Lease Suspensions, Cessation of Production, Royalty Rate Reductions and Energy Policy Act Royalty Rate Conversions

The title of final subpart 3212 has been expanded to better reflect all subject matter within this subpart.

Lease Suspensions

Final section 3212.10 addresses the difference between a suspension of operations and production and a suspension of operations. Under final section 3212.10(a), a suspension of operations and production is a temporary relief from production obligations that a lessee may request from the BLM.

This section removes economic conditions as a basis for concluding that continued operations are unjustifiable. The BLM believes that a lessee should not be able to hold a lease indefinitely merely because it is uneconomic to conduct operations. This would not promote the development and recovery of geothermal resources. In circumstances where geothermal operations are expected to become economic, the new statute provides that a lessee that is subject to the new statutory provisions could cease production for as much as 10 years in aggregate and yet hold its lease through the payment of advanced royalty (see discussion of final section 3212.15(a)(1), below).

Final section 3212.10(b) explains that a suspension of operations is when the BLM, on its own initiative, orders a lessee to stop production temporarily in the interest of conservation. The regulatory text more closely follows the statute at 30 U.S.C. 1010 than did the previous regulation. We received no comments on section 3212.10, and have adopted it as proposed.

Final section 3212.11 remains substantively unchanged from the previous regulation except that the final rule clarifies that unit obligations may be separately suspended under subpart 3287. We received no comments on this section, and have adopted it as proposed.

Final section 3212.12 is similar to the previous section except that paragraph (b) clarifies that a lessee cannot unilaterally terminate a suspension that the BLM ordered. The reference to ''minimum'' royalties has also been removed because, as specified under final section 3211.21(a), minimum royalties are no longer required for certain categories of leases. For leases identified under final section 3211.21(b), minimum royalties will continue to apply and will need to resume upon termination of a suspension. We received no comments on this section, and have adopted it as proposed.

Final section 3212.13 is substantively similar to the previous rule except that during a suspension of operations, the BLM may also suspend lease or royalty obligations if it determines that a lessee would be denied all beneficial use of its lease during the period of the suspension. Although we received no comments on this section, the final rule makes it clear that the BLM has discretion to suspend a lease or royalty obligations. The proposal could have been misinterpreted to mean that BLM is required to suspend the rental or royalty obligations.

Final section 3212.14 removes the previous reference to ''minimum'' royalties and substitutes the word ''terminate'' for the previous word ''cancel,'' because the remedy referred to should be a termination, not a cancellation. As noted above, the resumption of ''rental and royalty'' payments may include minimum royalty payments under final section 3211.21 for certain categories of leases. We received no comments on this section, and have adopted it as proposed.

Lease Requirements and Payments Due During a Cessation of Production

Final section 3212.15 addresses whether, and under what circumstances, a lease can remain in full force and effect if a lessee ceases production and the BLM does not grant a suspension. Section 3212.15 implements 30 U.S.C. 1004(f)(1) and (3).

In part, the intent of final section 3212.15 is to allow temporary cessations of production, lasting more than a month, without lease termination and without a lessee having to apply for a suspension of operations and production. Thus, under this final rule, the BLM will not consider production stoppages of less than one full calendar month to be a cessation of production. The BLM added this limitation for several reasons:

(1) Routine maintenance, such as plant overhauls, is an inherent part of producing a geothermal resource. While overhauls and other maintenance can last more than a month, most maintenance operations only require plant shut down for a period of days or weeks. Because maintenance is an inherent part of producing a geothermal resource, performing maintenance for less than a month is still considered to be ''production;''

(2) From an administrative standpoint, tracking shutdowns lasting less than a month would be expensive and cumbersome. The reports that the BLM receives are all based on calendar months. If a lease was shut down for an entire calendar month, the reports required by subpart 3270 would indicate zero production and this would alert the BLM to consider implementing this section of the regulations. However, if a lease produced for part of a month, the reports would indicate some quantity of production. The only way the BLM could determine if the lease was not producing for part of a month would be a physical inspection of the lease and a review of the metering records to determine when the lease was shut-in; and

(3) If a lease produces for any portion of a month, royalty would be due. As long as a lessee is diligently producing from its lease, there is no need to collect a royalty on actual production for a portion of a month and an advanced royalty for cessation of production for the remainder of the month. Accordingly, final section 3212.15 will only apply if an operation is shut down for more than a calendar month.

Final section 3212.15 contains separate paragraphs, each of which describe a set of circumstances under which a cessation of production could occur without lease termination. In this final rule, we redesignate proposed section 3212.15(a) as final section 3212.15(a)(1) and add a new section 3212.15(a)(2) that is discussed below. This has been done because only certain categories of leases are subject to the advanced royalty provisions of the new statute, and others can maintain their leases in other ways, as discussed below.

Final section 3212.15(a)(1) implements 30 U.S.C. 1004(f)(1), which allows the payment of advanced royalty in lieu of production. This paragraph applies to leases issued on or after August 8, 2005 (other than leases issued in response to applications pending on that date for which no election is made under section 3200.8(b)(1)), and to leases issued before August 8, 2005, for which an election to all of the terms of the regulation is made under section 3200.7(a)(2). For such leases, under the final rule, once commercial production is achieved, a lessee will be allowed to keep a lease in effect for a total of 10 years with no production, without having to apply for a suspension of

operations, if the lessee continues to pay advanced royalty under the final MMS regulations at 30 CFR 218.305. The BLM has interpreted 30 U.S.C. 1004(f)(1) to allow a total of 120 months (10 years) of advanced royalty payments, whether consecutive or not. As explained in the MMS rule at 30 CFR 218.305, the amount of advanced royalties due during a cessation of production for leases subject to the new statutory provision is no longer the ''minimum royalty'' referenced in previous sections 3211.17 and 3212.14, but is based upon an historical average monthly royalty rate.

Because 43 CFR 3207.15 (implementing 30 U.S.C. 1005(g) and (h)) provides for maintaining the lease through a production extension if the lessee has a well capable of production and makes diligent efforts to utilize the resource, we interpret the cessation of production provision at 43 CFR 3212.15(a)(1) as not requiring a well capable of production or diligent efforts to utilize the resource, as long as the lessee pays advanced royalties.

A lessee will continue to be required to pay rentals during the period for which it pays advanced royalty. The BLM has reached this conclusion because the section of the Energy Policy Act that establishes rental obligations, 30 U.S.C. 1004(a)(3), specifies that rentals are paid for each year of a lease, without exception. To understand the manner in which rental payments and rental credits will affect advanced royalty calculations and payments, see the final MMS rule.

Because the statutory language of 30 U.S.C. 1004(f)(1) is specific to leases on which royalty was previously paid, final section 3212.15(a)(1) does not apply to direct use operations where the lessee pays direct use fees instead of royalties. The Energy Policy Act does not contain an ''advanced fee'' counterpart for direct use. Therefore, a lessee using the geothermal resource for seasonal operations in a greenhouse, for example, could not pay advanced royalties during the months of the year when no production occurs to maintain its lease in effect. However, if the BLM approved the seasonal operations as part of the lessee's utilization plan, it would not be considered a cessation of production. If seasonal operations were not approved, the lessee would need a lease suspension to maintain the lease in effect.

Under final section 3212.15(a)(1), the term ''commercial production'' has a different meaning than the term ''produced or utilized in commercial quantities,'' because the advanced royalty section is not intended to apply to leases that have a well capable of production without having actually produced geothermal resources; it is only intended to apply to leases that have achieved actual production or are receiving allocated production through some type of agreement.

Although we did not receive a comment on this issue, in reviewing the proposed rule we recognized that a provision needed to be added to account for those leases that continue to be subject to the royalty provisions in effect on August 8, 2005, and do not have the opportunity to pay advanced royalties. Although these regulations allow leases issued before August 8, 2005, and leases issued based upon applications pending on August 8, 2005, to elect to be subject to all of the regulations of 43 CFR parts 3200 and 3280, some lessees may choose not to make such an election and will remain subject to the earlier royalty provisions. Those lessees will not be able to pay advanced royalties to maintain their leases.

However, such lessees had recourse under the earlier rules to maintain their leases by paying minimum royalties. Thus, for leases issued before August 8, 2005, for which no election is made under section 3200.7(a)(2), and for leases issued in response to applications pending on August 8, 2005, for which no election is made under section 3200.8(b)(1), final section 3212.15(a)(2) has been added to address the conditions necessary for a lease to remain in effect during the period in which there is no production and the lessee does not have an approved suspension. Under such circumstances, a lease will remain in effect if the lessee: (1) Continues to make minimum royalty payments as specified in final section 3211.21(b); (2) Maintains a well capable of production in commercial quantities; (3) Continues to make diligent efforts to utilize the geothermal resource; and (4) Satisfies any other applicable requirements. This practice was allowable under, but not well articulated in, the previous regulations (previous section 3211.17, now restored in substance as final sections 3211.21 and 3212.14).

Final section 3212.15(b) specifies other circumstances that would allow leases to remain in full force and effect without having to pay advanced royalties if production ceases. This section includes situations when the BLM: (1) Requires or causes the cessation of production; or (2) Determines that the cessation of production is required or otherwise caused by the Secretary of the Air Force, Army, or Navy; by a state or a political subdivision of a state; or by a force majeure event. This section implements 30 U.S.C. 1004(f)(3). We received no comments on this section, and have adopted it as proposed.

Final section 3212.15(c) allows lessees to keep their leases in effect (without paying advanced royalties) during extended outages due to maintenance activities that are necessary to maintain operations. For this paragraph to apply, the maintenance would be required to last more than one calendar month and would require the BLM approval before the end of the first month in which no production occurs. To obtain approval, the lessee must demonstrate to the BLM's satisfaction that the cessation is part of required maintenance. The basis for this provision is that maintenance required to maintain operations is a production activity, not a cessation of operations. Required maintenance activities under this paragraph could include overhauling a power plant, re-drilling or re-working wells that are critical to plant operation, or repairing and improving gathering systems or transmission lines that necessitate the discontinuation of production. It should be noted that the application of paragraph (c) of this section does not affect a lessee's obligations to pay rentals or minimum royalties, whichever is applicable.

One comment requested an alternative to obtaining prior approval for maintenance activities lasting more than 1 month, as required in final section 3212.15(c). The commenter alluded to ''upset'' conditions for which it would be impossible to plan in advance or to obtain prior approval. We accept the comment. The intent of the proposed requirement was twofold: (1) To ensure that maintenance lasting more than a calendar month is not misconstrued to be a cessation of production requiring advanced royalties to be paid; and (2) The filing of a Geothermal Sundry Notice would give the BLM the opportunity to review the reason for the extended outage to ensure that it meets the criteria for maintenance. However, the intent of the requirement does not necessarily require that a Geothermal Sundry Notice be filed in advance of the outage. As long as the BLM is made aware of the outage prior to the end of the first month where there will be no reported production on a lease, the need for a payment of advanced royalty will be averted. Therefore, the last sentence of final section 3212.15(c) was changed to read: ''You must obtain BLM approval by submitting a Geothermal Sundry Notice if the activity will require more

than 1 calendar month to be classified as maintenance under this paragraph. The Geothermal Sundry Notice must be received by BLM before the end of the first calendar month in which there will be no production.''

For those lessees subject to the royalty provisions in effect on August 8, 2005, lessees would continue to be subject to applicable minimum royalty obligations during maintenance periods, and could keep their leases in effect by satisfying the requirements of final section 3212.15(a)(2) instead of under final section 3212.15(c).

Final section 3212.16 replaces previous section 3212.15 and provides the standards for reduction, suspension, or waiver of rental or royalties. It is similar to the previous section, but more closely follows the statutory provision at 30 U.S.C. 1012. Paragraph (b) makes clear that the BLM will not approve a royalty reduction, suspension, or waiver unless all royalty interest owners other than the United States accept a similar reduction, suspension, or waiver. This provision was in the previous regulations at section 3212.16(b). We received no comments on this section.

Final section 3212.17 specifies the information that must be included with a request for a royalty or rental rate reduction, suspension, or waiver. It includes the information in previous section 3212.16, but clarifies that all of the information must be submitted. We received no comments on this section, and have adopted it as proposed.

Production Incentives

The Energy Policy Act (at Section 224(c) and (d)) establishes production incentives for new facilities and qualified expansion projects that are put into commercial operation by August 8, 2011. The incentives are in the form of a 4-year, 50 percent reduction in royalty from what otherwise would be due. Final sections 3212.18 through 3212.24, and final MMS regulations at 30 CFR 218.307, implement these statutory provisions.

If a project is defined as a ''new facility,'' all of the production from that facility is subject to the 50 percent reduction in royalty that would otherwise be due. If a project is defined as a ''qualified expansion project,'' only the additional electricity generated as a result of the project is subject to the reduced royalty. Qualifying a project as a ''new facility'' would generally be more difficult and would typically result in more capital expenditure than an expansion project. Although a ''qualified expansion project'' may be easier to achieve, strict monthly production targets would be established that the project must meet in order to qualify.

Final section 3212.18 provides a general description of the requirements for obtaining a production incentive.

The production incentives will only be available for those leases that were issued before August 8, 2005, and that do not convert their royalty provisions under final section 3212.25. Because Section 224(c) of the Energy Policy Act specifically refers to reductions in royalty, the BLM has interpreted this to mean that the incentives are intended only for the commercial generation of electricity and not for direct use projects.

The BLM received one comment requesting clarification of section 3212.18 regarding the types of leases for which production incentives apply, and referring to the new classification of leases in the final MMS rule at 30 CFR 206.351.

The production incentives discussed in section 3212.18 are only available for leases that were in effect prior to August 8, 2005, and on which the royalty terms were not converted under section 3212.25 (equivalent to part of MMS Class 1). These criteria are listed in sections 3212.18(a) and (b), respectively. In addition, production incentives are only available for leases that provide for the commercial generation of electricity (section 3212.18(d)). Because no changes to these regulations were requested by the commenter, no changes were made. However, the MMS has made changes to its final rule to clarify these class designations.

Final section 3212.19 requires lessees seeking a production incentive to submit a written request. The BLM does not anticipate developing a specific application form for production incentive requests; a lessee can make the request in a letter. The letter can provide a description of the project and whether the applicant prefers the project to be considered a new facility or a qualified expansion project. If the applicant is requesting the project to be considered as a new facility, the letter should include sufficient technical justification to support the general criteria set forth in section 3212.22. If the applicant is requesting the project to be considered as a qualified expansion project, the letter should describe the anticipated amount of capital expenditure (section 3212.21(a)) and the estimated increase in net generation resulting from the project (section 3212.21(b)). The letter should include sufficient technical detail to support these estimates. We received no comments on this section, and have adopted it as proposed.

Final section 3212.20 describes how the BLM will review a request for a production incentive. The BLM will review incentive requests on a case-by-case basis to determine whether a proposed project meets the criteria for a qualified expansion project under final section 3212.21 or a new facility under final section 3212.22 (see the discussions below of the criteria for qualified expansion projects and new facilities). If the request does not meet the criteria for the type of project the lessee requests, the BLM will determine whether it meets the criteria for the other type of production incentive project.

Under final section 3212.20(b), if the BLM determines that a lessee has a qualified expansion project, the BLM will, as part of its approval, provide the lessee with a schedule of monthly target net generation amounts. Projects must generate greater than these amounts to qualify for the production incentive. These amounts will quantify the required 10 percent increase in net generation over the projected net generation without the project. The schedule will be specific to the facility or facilities that are affected by the project and will cover the 48-month time period during which the production incentive may apply. The lessee will receive the production incentive only for those months in which its net generation exceeds the monthly target. Averaging of production to achieve production targets will not be allowed (see the preamble discussion of section 3212.23). We received no comments on this section. However, in the final rule we make it clear that net generation must exceed the monthly target to qualify for the production incentive, as required by the Energy Policy Act.

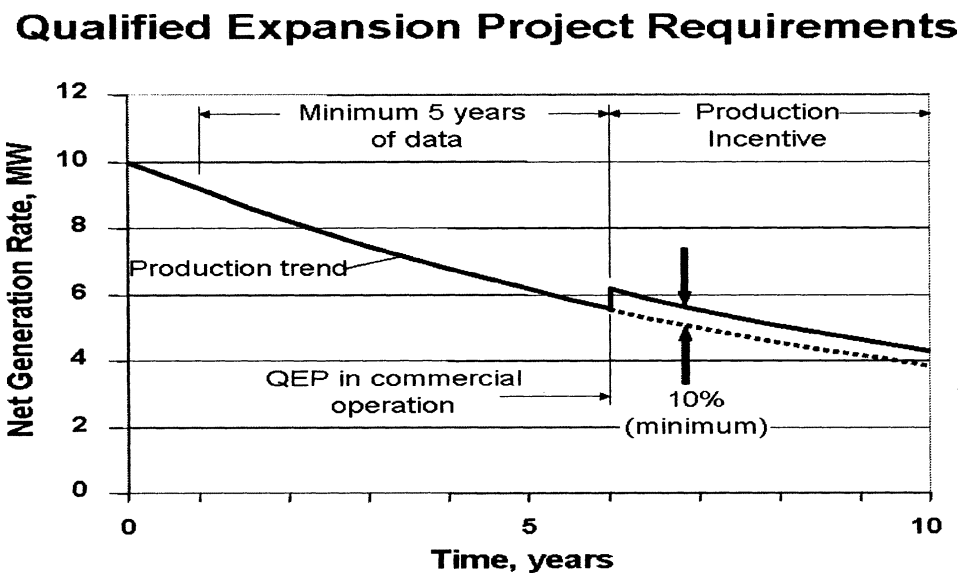
Final section 3212.21 specifies the criteria necessary to establish a qualified expansion project for the purpose of obtaining a production incentive. Because one goal of the Energy Policy Act is to encourage new projects that will increase the amount of electricity generated from geothermal resources, the BLM will not approve projects for this incentive that do not involve significant capital expenditure. Specifically, the BLM is concerned that this provision of the Energy Policy Act could be abused if, for instance, a lessee simply opens production valves to achieve the required increase in generation. Examples of activities involving substantial capital expenditure could include: (1) The drilling of additional wells; (2) Retrofitting existing wells and collection systems to increase production rates; (3)

Retrofitting turbines or power plant components to increase efficiency; (4) Adding additional generation capacity to existing plants; and (5) Enhanced recovery projects such as augmented injection. Projects that are not associated with substantial capital expenditure, such as opening production valves or operating existing equipment at higher rates, would not be considered to be qualified expansion projects.

While the Energy Policy Act specifically refers to ''expansion of the facility'' in relation to qualified expansion projects, the BLM broadly interprets this to mean the expansion of any portion of a geothermal project that will result in increased generation. This includes not only expansion to the power plant, but also projects in the well field, such as additional drilling, workovers, and enhanced geothermal projects, such as augmented injection or acid and fracture stimulation.

Under Section 224(d) of the Energy Policy Act, a qualified expansion project must increase ''production'' by more than 10 percent over the average monthly production during the previous 5 years, taking into consideration production trends that occurred in those 5 years. The BLM interprets this provision to mean that if 5 years of data are not available, the project could not be classified as a qualified expansion project. In addition, the BLM interprets the term ''production'' to mean ''net generation,'' because this meets the intent of the statute to increase the amount of useable electricity from geothermal resources. The following graph illustrates these requirements:

If a lessee satisfies the criteria for a qualified expansion project, the BLM will perform a reservoir analysis of the 5 years of data that is submitted and, from that analysis, will develop a monthly schedule of target net generation amounts. The lessee could perform its own reservoir analysis and develop a schedule of target generation amounts and submit it to BLM for review. The BLM could modify this schedule. Whichever schedule BLM approves, net generation must exceed these target amounts to qualify for a reduced royalty for that month. Because the production incentive is only in effect for 4 years, a schedule will cover the 48-month period for which the production incentive may be applied. We received no comments on this section, and have adopted it as proposed.



Final section 3212.22 identifies criteria for determining whether a project qualifies as a ''new facility.'' Because the BLM does not have a formal definition for ''facility'' and because of the high degree of variation in projects, each application will be considered on a case-by-case basis based on the factors described in the rule. Factors listed in support of concluding that a project qualifies as a new facility include: (1) The project requires a new site license or facility construction permit if it is on Federal lands; (2) The project requires a new Commercial Use Permit; (3) The project includes at least one new turbine-generator unit; (4) The project involves a new sales contract; (5) The project involves a new or substantially larger footprint; or (6) The project is not contiguous to an existing project.

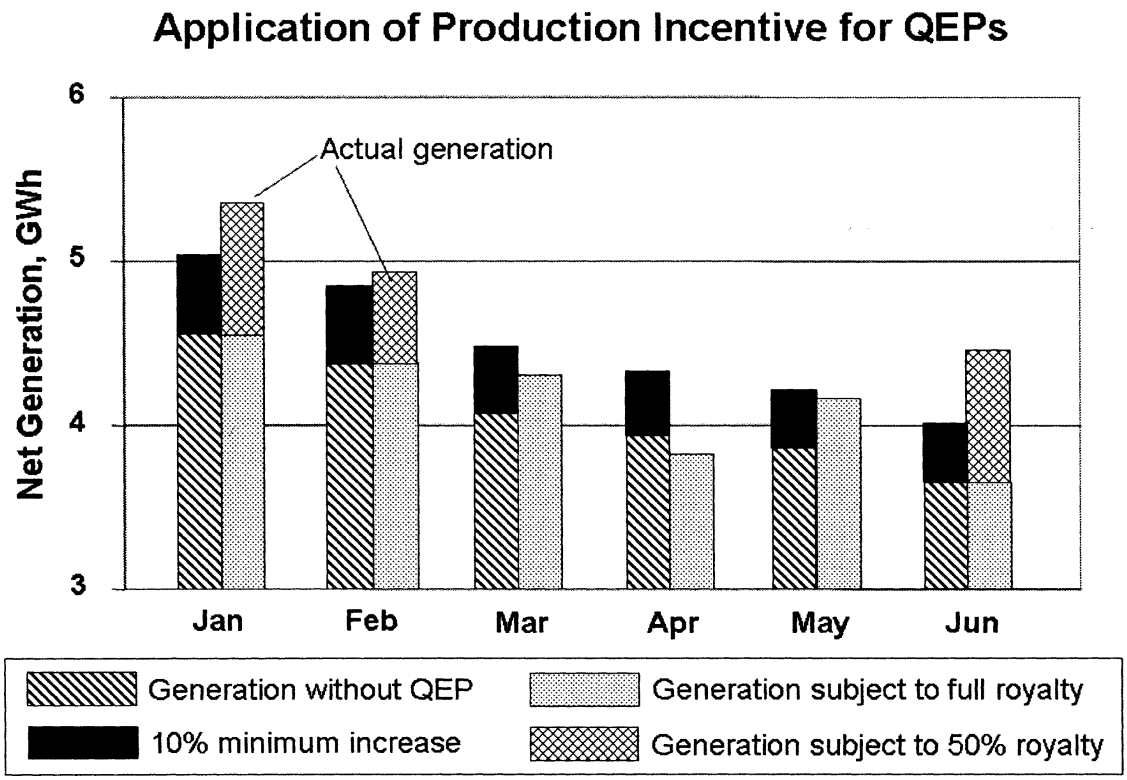
Generally, a new facility will not be: (1) Authorized only with a Geothermal Drilling Permit; (2) Constructed entirely within the footprint of an existing facility; or (3) Involve only well field projects such as drilling new wells, increasing injection, and enhanced recovery projects.

If the BLM determines that a proposed project could be approved either as a ''new facility'' or as ''qualified expansion project,'' the BLM will approve the application under the category requested by the applicant. If a project does not qualify as a ''new facility,'' the BLM will automatically review it, with no action necessary on the applicant's part, to see if it will qualify as a ''qualified expansion project.'' We received no comments on this section, and have adopted it as proposed.

Final section 3212.23 describes how production incentives apply to qualified expansion projects. The Energy Policy Act, at Section 224(d), requires a production incentive to be granted if a qualified expansion project resulted in greater than a 10 percent increase in production. However, that section of the Act is silent on how long the 10 percent increase would have to be maintained. The BLM is concerned that a project could exceed the target increase for a short period, yet obtain the production incentive for the entire allowable 4 year period. The BLM believes the intent of the production incentive is to encourage projects that would result in a sustainable increase in production. Therefore, final section 3212.23

authorizes a reduced royalty only for those months where the qualified expansion project exceeds the BLM-established net generation targets.

The Energy Policy Act at Section 224(c)(1)(b), requires the production incentive to be applied to ''qualified expansion geothermal energy,'' which is further defined in Section 224(d)(1) of the Energy Policy Act as being a ''production'' increase as a result of the expansion of the facility. The BLM interprets this to mean that the reduced royalty only applies to the increase in net generation resulting from a qualified expansion project. To define the increase in net generation, final section 3212.23 includes an equation that uses the target generation amounts defined in final section 3212.20 as a basis. The denominator of the equation (1.1) in section 3212.23 converts the target generation amount to the baseline generation amount which represents the amount of electricity that would have been generated without the qualified expansion project. In the final rule we revised the description of the formula to make it clear exactly which production qualifies for the incentive. The following bar graph illustrates the application of the incentive for qualified expansion projects:



Under final section 3212.24, for projects that qualify as ''new facilities,'' the royalty on all the net generation from the facility will be reduced by 50 percent for the 48-month period following the commencement of commercial operation, regardless of the amount of electricity generated. To simplify the administration and tracking of the production incentives, the production incentive takes effect on the first day of the month following the commencement of commercial operation of the project. In the final rule we added a sentence to the end of paragraph (a) to make it clear that the incentive applies to the entire commercial generation of electricity from the new facility. The amount of the production incentive for new facilities is established by the final MMS regulations. We received no comments on this section, and with the exception of adding the clarifying language, have adopted it as proposed.

Energy Policy Act Royalty Rate Conversions

Final section 3212.25(a) implements Section 224(e) of the Energy Policy Act, allowing lessees of geothermal leases issued before August 8, 2005, to request that the BLM modify their leases to convert the royalty rate terms of their leases to the royalty and direct use fee terms in the Energy Policy Act. Final section 3212.25(a) also provides that, if the BLM modifies the royalty rate terms of a lease, the new royalty rates and direct use fees will apply to all future production from or allocated to that lease. Final section 3212.25(b) references final sections 3211.17 and 3211.18 and applicable MMS regulations for the specific royalty rates and direct use fees that will apply to a modified lease.

One commenter suggested that language be added to section 3212.25 to clarify that once a lessee decides to convert the royalty terms of its lease under this subpart, that the decision is irreversible. This comment is accepted because the intent of Section 224(e) of the Energy Policy Act is clearly to make the change in royalty terms permanent. Adding language to this effect in section 3212.25(a) will clarify the intent. Section 3212.25(a) has been changed to read in part: ''You may withdraw your request before it is granted, but once you accept the new terms, you may not apply to revert to the earlier royalty rates. If your request to modify is granted, the new royalty rate or direct use fees will apply to all geothermal resources produced from your lease for as long as your lease remains in effect.''

In reviewing the comments received, the BLM was concerned that the first sentence of section 3212.25(a) could be construed to mean that certain entities besides the lessee could submit a request to modify the royalty terms of a lease. This confusion may arise because

the MMS definition of lessee (30 CFR 206.351) includes anyone ''who has been assigned an obligation to make royalty, fee, or other payments required * * * .'' The MMS definition also includes affiliates of the lessee who use the geothermal resource to generate electricity, in a direct use process, to recover byproducts, or who sell or transport lease production. The intent of section 3212.25(a) is that only the entity holding record title interest in a geothermal lease (the ''lessee'' as defined in the BLM regulations at 43 CFR 3200.5) can be granted a modification in royalty terms of the lease. To make this change, we modified this section to make it clear that ''you'' refers to the lessee.

In implementing Section 224(e) of the Energy Policy Act, the BLM construes the statute to mean that the only royalty term in the lease that will be converted is the royalty rate on production from, or allocated to, the lease. This is emphasized in the final rule by use in a number of places of the phrase ''royalty rate terms'' instead of the proposed phrase ''royalty terms.''

Other lease and statutory terms pertaining to ''royalty'' exist, such as ''minimum royalty'' (see final section 3211.21 incorporating previous sections 3211.10 and 3211.17) and ''advanced royalty'' during cessation of production (final section 3212.15(a)(1)). Under the final rule, these terms will not be converted under an application to convert royalty rate terms pursuant to final section 3212.25. Also, the royalty rate for byproducts will not be modified under a section 3212.25 conversion. This is because Section 224(e)(2) of the Energy Policy Acts specifies that the modification that may be made under that section relates to royalties that will be computed ''on a percentage of the gross proceeds from the sale of electricity * * *.'' Because byproducts are unrelated to the generation of electricity, the section does not apply to byproducts. In this final rule, we added a sentence to section 3212.25(a) to clarify this. As explained above, we also restructured final section 3211.19, relating to byproducts, to differentiate between leases that will be governed by these final regulations and those that will remain subject in part to the previous regulations. However, as discussed earlier, a lessee of a lease issued before August 8, 2005, can choose to make all of its lease terms subject to the new provisions adopted in this rule by making an election under section 3200.7(a)(2).

For example, under the final rule, if the lessee of a lease issued prior to August 8, 2005, elects to convert the royalty rate terms of the lease under section 3212.25, the lessee will be subject to the new royalty rate on gross proceeds for the commercial generation of electricity and direct use fee schedule for direct use operations. Unless that lessee makes an election under section 3200.7(a)(2), however, the lessee will continue to be subject to the minimum royalty and byproduct royalty provisions of the previous regulations and will not be required to pay rental once commercial production begins. In addition, the lessee will not be able to keep its lease in effect by paying advanced royalty under section 3212.15(a)(1) if it ceases production for more than a calendar month, but would need to satisfy one of the other provisions of section 3212.15 to keep its lease in effect during a period of no production.

This interpretation as it relates to the non-conversion of minimum royalty and advance royalty provisions is based upon possible complications that could occur if some, but not all, of the other provisions changed. For example, under the Geothermal Steam Act, prior to the amendments made by the Energy Policy Act, rental on a lease was only due until the lease began actual production or was deemed to have a well capable of production. At that point, the greater of actual royalty on production or minimum royalty was due every month. If the BLM were to include the minimum royalty terms in the conversion under final section 3212.25, lessees electing to convert the royalty terms of their lease would no longer pay minimum royalty because there is no minimum royalty provision in the Energy Policy Act. But, once a lease had a well deemed capable of production, the rental commitments of the existing lease terms would end; therefore, unless the rental provisions of the new statute applied, the lessee would not pay rental or minimum royalty during a period on non-production. The BLM does not believe it was the intent of the Energy Policy Act to allow lessees to hold a lease without making some type of payment. Section 224(e) of the Energy Policy Act does not allow lessees to apply to change the rental terms of existing leases; only the royalty rate term.

In addition, if lessees did not convert the requirement at previous section 3211.10 for minimum royalty payment, then becoming subject to the payment of advanced royalties as well when production ceases for more than a calendar month would be burdensome and redundant. Absent a suspension, in cases where an existing lessee does not produce for a calendar month, the previous minimum royalty provisions require that minimum royalty be paid (see previous sections 3211.10 and 3211.17 and final section 3211.21). The BLM believes that Congress did not intend for one lessee to pay both minimum royalty and advanced royalty if production ceases.

The BLM received no comments on its interpretation. Except for the addition of the clarification discussed above regarding byproducts, this section has been adopted as proposed. As already noted, however, existing lessees do have the option to elect to make all of the terms of their leases subject to these regulations (see section 3200.7), so that, in addition to a converted royalty rate, their leases would also be subject, for instance, both to both continual rental obligations and advanced royalty, instead of minimum royalties during a cessation of production.

Section 224(e) of the Energy Policy Act requires any lessee wishing to convert the royalty rate terms of its lease to apply to the BLM. Final section 3212.26 establishes an application process and requires certain types of information to be submitted together with the application. For electrical generation, the lessee must submit enough information to allow the BLM to determine how much royalty the lessee would have paid under the netback method, if that is the current method the lessee is using. As mentioned earlier, in situations where a lessee or its affiliate is selling geothermal resources at arm's length, before those resources are used to generate electricity, the lessee would be required to document in its application that it has access to the purchaser's gross proceeds derived from the sale of the electricity. From the information contained in the application, the BLM will calculate a new royalty rate that will result in the same amount of royalty.

Final section 3212.26(c) states that the BLM must receive an application to convert no later than 18 months following the effective date of the applicable final rule. For direct use operations, the applicable final rule is the MMS rule at 30 CFR 206.356(b)(1) (direct use fee schedule); for the commercial generation of electricity, the applicable final rule is this rule, and the application deadline is December 1, 2008. This section implements Section 224(e)(2) of the Energy Policy Act. If both the MMS and the BLM final rules are made effective on the same day, then all applications will have to be received no later than December 1, 2008. We received no comments suggesting changes to this section, and have adopted it as proposed.

Final section 3212.27 implements Section 224(e)(3) and (4) of the Energy Policy Act, and also requires the BLM to consult with the MMS in implementing the royalty conversion provision. The BLM will also review an application to ensure that the lessee has suitable meters necessary to determine the royalty due under the modified lease terms.

The final rule will allow lessees who have requested a modification of the royalty terms of their lease 30 days to reject the modified royalty rate that the BLM determines. Without a review period, lessees would essentially be committing themselves to a new royalty rate at the time they requested the modification, without knowing what the new royalty rate would be. This could involve some risk for lessees, and the BLM felt this risk would be a disincentive for lessees to apply for a conversion of royalty terms. In addition, if there were no review period, the only recourse lessees would have to a royalty percentage they found objectionable would be an appeal to the Interior Board of Land Appeals (IBLA). The BLM believes it is in the public interest to get as many leases as possible off the netback system, and that offering a review period would help facilitate this goal.

In the final rule the BLM has adopted a process in final section 3212.27(d) to allow the BLM to comply with the time specified in Section 224(e)(3)(A) of the Energy Policy Act and issue a lease modification no later than 180 days after the date of receipt of a complete application under section 3212.25. The revised procedure is as follows: (1) No later than 140 days after the day on which the BLM determines it received a complete request with all necessary information, the BLM will send the lessee written notification of the proposed royalty rate that the BLM determines to be revenue neutral; (2) No later than 30 days after the date of receipt of the BLM notification, the lessee may reject the proposed royalty rate in writing; and (3) If the lessee rejects the proposed rate, the BLM must receive written notification from the lessee no later than 30 days of the date after receipt of the BLM's notification.

The rule provides flexibility by specifying that the BLM will accept a faxed rejection notification received within the 30-day time limit, if followed by a written confirmation that the BLM must receive no later than the 179th day following the day on which it determines the complete request was received. The time frames specified will allow the BLM to issue the lease modification within the statutory time frame. The rule also provides that if a lessee rejects the proposed royalty rate on a timely basis: (1) The BLM will not issue a decision modifying the royalty rate terms of the lease; (2) The existing royalty rate terms in the lease continue to apply; and (3) The lessee may not reapply for a royalty rate term conversion under section 3212.25 of this part. Finally, the rule provides that unless timely written notification is received from the lessee rejecting the proposed rate, the BLM will issue a decision modifying the royalty rate terms of the lease no later than 180 days after the day on which the BLM determines a complete request was received. The effective date of the new royalty rate is the first day of the month following the date on which the decision was issued. For example, a decision issued on July 21st, will become effective on August 1st. The BLM decision establishing the royalty rate will be appealable to the IBLA, but allowing the applicant to reject the new royalty rate completely before it is finalized and maintain the existing rate may serve to limit the number of appeals.

One commenter requested that the 180-day period for the BLM to respond to a request for modification of royalty terms (section 3212.27(d)) be reduced to 120 days. We did not change the rule in response to this comment. As mentioned above, the 180-day time frame is required by statute. In light of the 30-day review period now being afforded the lessee, the potential complexity of the economic analyses, and the expected volume of lease conversion requests, the BLM does not feel that 120 days would offer sufficient time to process requests.

The BLM received a comment asking for clarification of a site-specific issue regarding pre-paid royalty. We reject this comment because it addresses a specific and unique situation. These regulations preserve the royalty terms for existing leases unless a lessee chooses to convert the lease. It is not appropriate to address in these regulations specific circumstances arising under existing leases. To the extent the commenter raises a valuation issue, it should consult with the MMS.

One commenter commended the BLM and the MMS for using the royalty rates recommended by the MMS Royalty Policy Committee. The BLM acknowledges the comment and recognizes that use of these recommended royalty rates in the proposed rule reflects a consensus reached by our stakeholders.

Subpart 3213—Relinquishment, Termination, and Cancellation

Final sections 3213.10 and 3213.11, relating to lease relinquishment, contain minor changes from the previous sections. We received no comments on these sections, and with the exception of minor changes, have adopted them as proposed.

Final section 3213.12, relating to the minimum size of a remaining lease following a partial relinquishment, is amended to create an exception for direct use leases. The exception is necessary because, under 30 U.S.C. 1003(g)(1), the size of direct use leases could easily be less than 640 acres. We received no comments on this section, and have adopted it as proposed.

Final section 3213.13 contains some editorial changes. For the most part, it remains substantively unchanged from the previous regulation, but clarifies that surface and other resources need to be reclaimed as well as restored. We received no comments on this section, and have adopted it as proposed.

Final section 3213.14 implements 30 U.S.C. 1004(g), regarding the termination of a lease for failure to pay rentals on time. This section represents a substantial change from the procedures under previous sections 3213.14 through 3213.20, which were based on statutory language that was removed by the Energy Policy Act. Under previous section 3213.14 (which implemented previous 30 U.S.C. 1004(c)), failure to pay the full rental amount by the anniversary date of the lease resulted in automatic termination of the lease by operation of law. No grace period was provided for late payment. Previous section 3213.15 (which implemented a proviso in previous 30 U.S.C. 1004(c)) provided that a lease will not terminate if the MMS receives a timely rental payment that is deficient by a nominal amount. Under the previous rule, the MMS notified the lessee of the nominal deficiency and provided a date by which a further payment must be paid. If the payment was not made in the time allowed, the BLM terminated the lease as of the anniversary date of the lease. Previous sections 3213.17, 3213.18, 3213.19, and 3213.20 contained a process for petitioning for lease reinstatement if a lease terminated for failure to pay rent on time. These regulatory provisions were also based on previous 30 U.S.C. 1004(c). The Energy Policy Act removed the provisions of 30 U.S.C. 1004(c) relating to lease termination, replacing them with the provisions of current 30 U.S.C. 1004(g), described below. The new

statute contains no express process to petition for lease reinstatement.

Under the revised statute at 30 U.S.C. 1004(g)(1), a 45-day grace period beginning on the date of the failure to pay the rental (the lease anniversary date) is provided for a lessee to pay its rent in full before the BLM will terminate a lease. The Secretary must terminate any lease with respect to which rental is not paid in full on the expiration of the 45-day period beginning on the date of the failure to pay the rental. Unlike the previous statute, the new statute contains no exception for timely rental payments that are deficient by a nominal amount. The section provides further, at 30 U.S.C. 1004(g)(3), that a lease that would have otherwise terminated upon expiration of the 45-day period will not terminate if the lessee pays to the Secretary, before the end of that period, the amount of rental due plus a late fee equal to 10 percent of the amount due. Final section 3213.14(a) implements this statutory provision. This provision also makes clear that, if the MMS does not receive a lessee's rental plus the late fee by the end of the 45-day period described above, the BLM will terminate the lease. We received no comments on this section, and have adopted it as proposed.

Under 30 U.S.C. 1004(g)(2), the Secretary is required to ''promptly'' notify a lessee that has not paid rental required under the lease, that the lease will be terminated at the end of the 45-day period referred to in 30 U.S.C. 1004(g)(1). The MMS will provide this notification. The legislative intent of this paragraph appears to be that the Secretary should put a lessee on notice that it has a grace period to pay rental before its lease will be terminated for failure to pay. From a logistical standpoint, however, this legislative intent may be frustrated. For instance, it may take the MMS a considerable amount of time to notify lessees that the lease anniversary date has passed and that the MMS has not received the rental payment when it was due. If, for example, it were to take the MMS 30 days to provide the required notification, a lessee would only have 15 days' notice to pay within the 45-day timeframe required by paragraph (1) of the Act. As a further example, it is possible in certain circumstances that the MMS notification would not occur until after the expiration of the 45-day period, and after the BLM lease termination.

The BLM is concerned that the practical difficulties with providing a lessee with adequate notice could lead to the unintended consequence of having leases terminate without the lessees being provided adequate notice to pay their overdue rental. Such an outcome would seem to be inconsistent with the requirement that the Secretary ''promptly'' notify the lessee of the unpaid rental. Final section 3213.14(b) addresses this situation and provides a remedy that the BLM believes to be consistent with Congressional intent. The final rule ensures that lessees have at least 30-days notice to pay overdue rental in full. It provides that if a lessee receives the MMS notification of the non-payment of rental less than 30 days before the end of the 45-day period, the lessee will have a full 30 days from receipt of the notice to pay its rental in full. If the MMS receives the rent plus the 10 percent late fee within 30 days after the lessee received the notification, the BLM will either not terminate the lease for non-payment of rental or will reinstate a lease that was terminated under final section 3213.14(a). In other words, every lessee will have no less than 30 days notice to either avoid a lease termination or to have its lease reinstated if it were terminated at the end of the 45-day period.

The statutory basis for final section 3213.14(b) is as follows: The statute does not expressly address the situation where, in practice, the ''prompt'' notification would compress the actual notice to a lessee to less than 30 days. The final rule more fully implements the Congressional intent of providing adequate notice to a lessee. Moreover, under 30 U.S.C. 1023, the Secretary may prescribe regulations that it may deem appropriate to carry out the provisions of the Act, and may include, without limitation, rules to prevent waste, conserve geothermal resources, and protect the public interest. Final section 3213.14(b) furthers all of these goals, and also implements Congressional intent to provide a fair grace period to a lessee who fails to pay rent on time. Although not directly applicable, this section is consistent with the intent of 30 U.S.C. 1011 that a lease not be terminated for any violation unless the lessee has 30 days' notice to correct the violation. We received no comments on this section, and have adopted it as proposed.

Final section 3213.15 carries forward the text of previous section 3213.16. Previous sections 3213.15, 3213.17, 3213.18, 3213.19, and 3213.20 have been removed because they do not reflect the current statute. We received no comments on removing these sections and have made these revisions as proposed.

Previous sections 3213.21 and 3213.22, relating to lease expiration, have been removed because these matters are covered in subpart 3207, relating to terms and extensions of leases. We received no comments on removing these sections and have adopted the changes as proposed.

Final sections 3213.16, 3213.17, 3213.18, and 3213.19 clarify the provisions and terminology of previous sections 3213.23, 3213.24, and 3213.25, relating to lease cancellation and termination. Lease cancellation means undoing the lease as if it never existed. Cancellation is covered by final section 3213.16 and is limited to situations when the BLM issues a lease in error. In other circumstances, the previous rules used the term ''cancel'' when the appropriate term should have been ''terminate.'' Thus, final section 3213.17 describes situations where the BLM could terminate (not cancel) a lease as of a particular date. Conforming changes are made to other provisions of the final regulations by replacement of the word ''cancellation'' with the word ''termination.'' The rule also clarifies that ''cancellation'' does not apply to non-payment of rent which, as explained above, would be covered by final section 3213.14. In response to a request by the MMS, the BLM has clarified in final section 3213.17 that among the bases for lease termination is the nonpayment of royalties or fees under 30 CFR 206 and 218. This is not new in substance, but a reminder to lessees of the possible consequences of not making correct payments to the MMS.

Final section 3213.19 addresses circumstances where the BLM notifies a lessee that its lease is being terminated because of a violation. It clarifies the procedures of the previous section 3213.25 by specifying that a hearing may be requested in the context of the appeal of a proposed lease termination. It also follows the statutory text of 30 U.S.C. 1011 in that a lessee may avoid lease termination by diligently proceeding to correct a violation, but also states that it is insufficient to make a good faith attempt to correct the violation without actually correcting it. We received no comments on sections 3213.16, 3213.17, 3213.18, and 3213.19, and have adopted the change in terminology as proposed.

Subpart 3214—Personal and Surety Bonds and Subpart 3215—Bond Release, Termination, and Cancellation

Subparts 3214 and 3215 address bonding of geothermal operations. Most sections of the final subparts remain substantively unchanged from their previous counterparts. Changes have been implemented to clarify

terminology, and improve grammar and readability. The changes are explained below.

In final section 3214.12(c), we specify that the bond must cover rent in addition to royalty because under the Energy Policy Act rents continue for the life of the lease and do not stop when commercial production begins, as was the case under previous regulations. Such a requirement was implied in the proposed rule under section 3214.12(d), which requires the bond to cover compliance with the requirements of section 3200.4.

In final section 3214.14(b), we provide that the bond may be increased to ensure the reclamation of the surface ''and other resources.'' The previous regulation did not expressly include ''other resources.'' We received one comment requesting clarification of this language, stating a concern that it was ambiguous and open-ended. The BLM disagrees. Rather than just surface reclamation, we are concerned that the lessee's operations could result in other environmental damage, such as to groundwater, and we want to make sure that the bond covers all appropriate reclamation and remediation.

In final section 3214.18, the title has been clarified to match the content of the section. Final section 3214.18(b) clarifies that reclamation responsibilities extend to resources other than the surface, and final section 3214.18(d) expressly mentions royalties as well as rents. We received no comments on this section, and have adopted it as proposed.

Final section 3215.13 has been reorganized for clarity. It also clarifies that even after bond termination, a surety and any other bond provider remain responsible for obligations that accrued during the period of liability while a bond was in effect. We received no comments on this section, and have adopted it as proposed.

Subpart 3216—Transfers

Subpart 3216 addresses geothermal lease transfers. The final subpart is substantively unchanged from the previous subpart. Minor changes have been adopted to clarify terminology, and improve grammar and readability.

We received one comment related to the last sentence in section 3216.13, ''What are my responsibilities after I transfer my interest?'' While this provision was unchanged from the previous regulations, we accept the commenter's observation that the provision is ambiguous and have clarified the last two sentences of 3216.13 to read: ''You also remain responsible for plugging and abandoning any wells that were drilled or existing on the lease while you held your interest. You must carry out this responsibility upon the BLM's determination at any future time that the wells must be plugged and abandoned.''

Final section 3216.14 has been changed to indicate that the filing fees for transfers are found in 43 CFR 3000.12. We received no comments on this section, and except for the change mentioned above, have adopted it as proposed.

Final section 3216.19 recognizes that direct use leases have different size constraints than regular geothermal leases. Thus, the final section relating to the size of allowable lease transfers contains an exception for direct use leases. We received no comments on this section, and have adopted it as proposed.

Subpart 3217—Cooperative Agreements

Subpart 3217 addresses cooperative agreements. The final subpart has few substantive changes from the previous subpart. Changes have been proposed to clarify terminology, and improve grammar and readability.

Subpart 3217 describes two types of cooperative agreements, unit and communitization agreements, and addresses the requirements of Federal lessees who join with others to conserve the geothermal resource under unit and communitization agreements. The Energy Policy Act, at 30 U.S.C. 1017(e), specifically authorizes the pooling of land under communitization agreements in order to develop geothermal resources where operators cannot successfully develop tracts independently. The BLM cannot approve these agreements unless the BLM determines them to be in the public interest.

Final section 3217.10, describing unit agreements, has been revised to more closely follow the statutory language at 30 U.S.C. 1017(a). The term ''cooperative plan'' is removed from the previous section 3217.10 because the agency does not require approval of a cooperative plan and does not use that term in a regulatory context.

Sections 3217.11 through 3217.13 are substantively unchanged from the previous regulations.

The term ''operating contracts'' is removed from final sections 3217.14 and 3217.15, leaving the statutory terms ''drilling contract'' and ''development contract,'' both of which appear in 30 U.S.C. 1017(g). The BLM uses the terms ''drilling contract'' and ''development contract'' interchangeably to describe the agreement parties use to cooperatively explore under a communitization agreement. Final section 3217.14(b) includes reference to regional exploration, which typically describes the scope of drilling or development contracts. This section has also been revised to make it clear that drilling or development contracts are limited to exploration activities. Final section 3217.14(c) is added to acknowledge current BLM practice of coordinating the review of a proposed drilling or development contract with the appropriate state agencies. Final section 3217.14(d) has been changed to more accurately reflect a provision of the Energy Policy Act that requires the BLM to determine that approval of a drilling or development contract best serves or is necessary for the conservation of natural resources, public convenience or necessity, or the interests of the United States.

Section 3217.15 remains substantively unchanged from the previous regulations. We received no comments related to subpart 3217, and so the changes are adopted as proposed.

Subpart 3250—Exploration Operations—General; Subpart 3251—Exploration Operations: Getting BLM Approval; Subpart 3252—Conducting Exploration Operations; Subpart 3253—Reports: Exploration Operations; Subpart 3254—Inspection, Enforcement, and Noncompliance for Exploration Operations; Subpart 3255—Confidential, Proprietary Information; and Subpart 3256—Exploration Operations Relief and Appeals

Subparts 3250 through 3256 contain provisions regulating geothermal exploration of Federal lands. Minor changes to these subparts clarify existing terminology and procedures and make the subparts more readable.

Several changes are adopted throughout these subparts to make it clear that an approved Notice of Intent to Conduct Geothermal Resource Exploration Operations would be equivalent to a permit. In most cases the terms ''Notice of Intent'' or ''Notice of Intent to Conduct Geothermal Resource Exploration Operations'' have been substituted for the terms ''exploration permit'' or ''permit.''

Final section 3250.10 is substantively unchanged from existing regulations and the proposed rule.

Final section 3250.11, addressing the general question related to where exploration can occur, has been moved from previous section 3251.11 of the subpart addressing exploration approval. This necessitates the renumbering of subpart 3251.

Final sections 3250.12 and 3250.13 are substantively unchanged from the previous regulations and the proposed rule.

The content of final section 3250.14 has been taken from the previous section 3250.11. This reorganization provides a more logical sequence of general questions related to the regulation of exploration operations.

There are no substantive changes to sections 3251.10 through 3251.15. As mentioned previously, the content of previous section 3251.11 has been moved to final section 3250.11 and the remaining sections have been renumbered to correspond to final sections 3251.10 through 3251.14.

Final section 3251.15(b) revises the previous section 3251.16(b) to ensure that bond release cannot occur unless operators not only have reclaimed the land surface, but also, if necessary, resolved other environmental, cultural, scenic, or recreational issues. Reclamation includes resolving the impacts of geothermal exploration activities on other resource values in addition to reclamation of the surface (see discussion and answer to comment related to section 3214.14(b)).

We received no comments on the changes to subparts 3250 through 3256, and have adopted these sections as proposed.

One commenter suggested expanding the use of categorical exclusions (CXs) under the NEPA to expedite exploration permits. Since the adoption of new categorical exclusions involves coordination and approval by the Council on Environmental Quality (CEQ), and was not part of the proposed rule, consideration of this request is beyond the scope of this final rule.

Subpart 3260—Geothermal Drilling Operations—General; Subpart 3261—Drilling Operations: Getting a Permit; Subpart 3262—Conducting Drilling Operations; Subpart 3263—Well Abandonment; Subpart 3264—Reports—Drilling Operations; Subpart 3265—Inspection, Enforcement, and Noncompliance for Drilling Operations; Subpart 3266—Confidential, Proprietary Information; and Subpart 3267—Geothermal Drilling Operations Relief and Appeals

Subparts 3260 through 3267 establish permitting and operations procedures for drilling and testing geothermal wells as well as producing or injecting geothermal resources. These subparts also address other types of geothermal well operations. No substantive changes were proposed to these subparts. Changes have been adopted to clarify terminology and improve grammar and readability.

We received no comments on the proposed minor changes to subparts 3260 through 3267, and have adopted them as proposed.

The BLM received some general comments related to environmental concerns, the NEPA, and permitting. As a general matter, the comments concerning the NEPA raise issues beyond the scope of these regulations. The NEPA process is governed by other regulations (40 CFR parts 1500 through 1508), in addition to our operations permit requirements in the various subparts in parts 3250, 3260, and 3270, none of which are substantively changed by the rule being promulgated today. The Energy Policy Act did not make changes to portions of the statute relating to surface use rights or permit requirements, and therefore these matters, and the environmental studies and timeframes associated with these requirements, are beyond the scope of this rule.

Subpart 3270—Utilization of Geothermal Resources—General; Subpart 3271—Utilization Operations: Getting a Permit; Subpart 3272—Utilization Plan and Facility Construction Permit; Subpart 3273—How to Apply for a Site License; Subpart 3274—Applying for and Obtaining a Commercial Use Permit; Subpart 3275—Conducting Utilization Operations; Subpart 3276—Reports: Utilization Operations; Subpart 3277—Inspections, Enforcement, and Noncompliance; Subpart 3278—Confidential, Proprietary Information; and Subpart 3279—Utilization Relief and Appeals

The regulations in subparts 3270 through 3279 address the permitting and operating requirements for the utilization of geothermal resources. Except as referenced below, no other substantive changes from the previous rules are made to these subparts. Changes have been adopted to clarify terminology and improve grammar and readability. The final rule adopts the proposed rule without substantive change.

Final section 3275.14 removes the previous requirement in section 3275.14(c)(3) to measure the temperature out of a facility because this information is no longer needed for the valuation of direct use operations using the MMS fee schedules. For ''no-sales'' situations, lessees with leases issued under the Energy Policy Act and with leases converting to the new royalty terms under sections 3212.25 or 3200.8 are no longer required to calculate the amount of heat displaced by the geothermal resource to compensate the Federal Government for the use of the geothermal resource. Instead, lessees will use a direct use fee schedule that is based only on inlet temperature and the monthly volume or mass produced (see the MMS regulation to be codified at 30 CFR 206.356). In developing the direct use fee schedule, the MMS assumed a fixed outlet temperature of 130 [deg]F, which greatly simplifies the metering system and the calculations.

For situations involving the arms-length sale of geothermal resources to a direct use facility and for leases issued under the previous royalty terms which do not convert to the new royalty terms, final section 3275.14(d) gives the BLM the authority to require outlet temperature recorders on a case-by-case basis, if needed.

One comment related to proposed section 3275.21, which provided that the BLM may order a lessee to drill and produce wells on its lease when the BLM finds it necessary to protect Federal interests, prevent drainage, or ensure that lease development and production occur in accordance with sound operating practices. The commenter asserted that it should be the developer's choice to drill, not the BLM's, and that the BLM should not be in a position to cause a developer to expend that kind of money. The BLM disagrees, and finalizes the rule as proposed. This provision is unchanged from the previous regulations. The BLM has the authority and responsibility to require the lessee to comply with lease terms that require a lessee to drill and produce to protect Federal interests, prevent drainage, or ensure that lease development and production occur in accordance with sound operating practices.

Final section 3276.14 eliminates the requirements of previous section 3276.14(a) to report a daily breakdown of flow, average temperature in, and average temperature out. The information requirements in previous sections 3276.14(d) and (e) are also eliminated. The purpose of the data was to allow the calculation and verification of thermal energy displaced, which was the basis for valuation in the previous MMS regulations. For leases issued under the Energy Policy Act, and for existing leases that convert to the new royalty terms of the Energy Policy Act under sections 3212.25 or 3200.8, direct use operations are valued using the MMS fee schedule that determines fees due as a function of inlet temperature and monthly volume or mass produced. Therefore, collection of the data is no longer necessary.

For situations where the resource is sold under an arm's length contract for use in a direct use facility and for leases issued with the previous royalty terms that do not convert to the royalty terms of the Energy Policy Act, the daily breakdown of flow, average temperature in, and average temperature out may still be required. However, the BLM believes these situations will be relatively rare and can be handled on a case-by-case basis under section 3276.14(d).

Part 3280—Geothermal Resources Unit Agreements

This final rule revises previous part 3280. For the most part, the final rule adopts the rules as proposed. The following identifies and discusses changes from the proposed rule.

The final rule implements the Energy Policy Act relating to unit agreements, specifically 30 U.S.C. 1017. Additionally, the final rule updates procedural requirements related to unit agreement administration. The rule clarifies the BLM's expanded authority regarding unitization, as provided under the Energy Policy Act. Under the rule, the BLM may require: (1) The formation of a unit agreement; (2) Existing Federal leases to commit to a unit agreement; (3) New leases to contain a provision requiring the lessee to agree to commit to a unit agreement if the BLM so requires; and (4) A modification of the rate of resource exploration or development within a unit. The rule also establishes that a majority interest of owners in a Federal lease has the authority to commit the lease to a unit agreement.

Other provisions of this rule do not change previous procedure or practice, but clarify and articulate unit agreement requirements. These provisions include: (1) Setting out application procedures for unit area designations and unit agreements, in the order each step typically occurs; (2) Identifying the BLM's procedures for reviewing applications and making final decisions regarding unit area designations, unit agreements, and participating areas; (3) Explaining the BLM procedures for administering a unit agreement once it is in effect; (4) Specifying how a unit operator can receive the BLM approval to modify unit terms, including those related to unit contraction; and (5) Establishing minimum initial and continuing unit development requirements and conditions for terminating the unit agreement. The final rule standardizes existing practices, assures consistent BLM procedures, and informs the public how the BLM handles unit agreements. These provisions are described in greater detail below.

Subpart 3280—Geothermal Resources Unit Agreements: General

Final section 3280.1 explains that the purpose and scope of part 3280 is to provide holders of Federal and non-Federal geothermal leases and owners of non-Federal mineral interests the opportunity to unite under a Federal geothermal unit agreement to explore for and develop geothermal resources in a manner that is necessary or advisable in the public interest. To be consistent with the statute, the final rule uses the phrase ''necessary or advisable in the public interest,'' derived from 30 U.S.C. 1017(a), rather than the proposed phrase ''meeting the public interest.''

This rule removes previous section 3280.0–3 as unnecessary. The authority citation for the part follows the Table of Contents for part 3280, and the discussion of functions within the Interior Department is covered by the Department of the Interior Departmental Manual.

Final section 3280.2 includes definitions from previous section 3280.0–5, with certain revisions. Unnecessary definitions of terms such as ''agreement'' and ''cooperative agreement'' are removed. Several definitions are added, including definitions for the terms ''unit contraction provision,'' ''plan of development,'' ''public interest,'' ''reasonably proven to produce'' and ''unit well.''

A minor change from the proposal was made to the final definition of the term ''unit well.'' Instead of stating that a unit well is located on a ''lease committed to the unit agreement,'' the final rule provides that a unit well is located on ''unitized land,'' a defined term.

The BLM's policy regarding the formation of units, previously included in section 3280.0–2, is revised and included in final section 3280.3. The new section sets forth the policy contained in 30 U.S.C. 1017(a) that, for the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof, lessees and their representatives can unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the reservoir, field, or like area, or any part thereof, including direct use resources, if determined and certified by the BLM to be necessary or advisable in the public interest. The BLM has decided not to adopt the proposed parenthetical phrase ''whether or not any part of the geothermal reservoir, field, or like area, is subject to any unit agreement'' because it does not appear to contribute substantially to the stated policy.

Final section 3280.4 addresses the BLM's authority to require the formation of a unit agreement and to require Federal leases to be committed to a unit agreement. It implements 30 U.S.C. 1017(a)(3) and (b). Final section 3280.4(a) provides that the BLM can initiate the formation of a unit agreement, or require an existing Federal lease to commit to a unit agreement, if it is in the public interest. This implements a statutory provision and does not require the consent of a lessee. Modification of lease terms to facilitate creation and operation of the unit, however, does require lessee consent (30 U.S.C. 1017(a)(4) and final section 3280.5).

Final section 3280.4(b) states that the BLM can require that Federal leases becoming effective on or after August 8, 2005, contain a provision stating that the BLM can require commitment of the lease to a unit agreement. Under this provision the BLM can also prescribe the unit agreement to which such lease will be required to commit in order to protect the rights of all parties in interest, including the United States. This provision implements 30 U.S.C. 1017(b)(2).

As mentioned above, final section 3280.5 provides that the BLM can, with the consent of the lessees involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases, and make conditions with respect to the leases in connection with the creation and operation of any such unit agreement as the BLM can consider necessary or advisable to secure the protection of the public interest. This implements 30 U.S.C. 1017(a)(4)(A). The rule also provides that if leases to be included in a unit have unlike lease terms, the leases will not be required to be modified to be in the same unit. This implements 30 U.S.C. 1017(a)(4)(B).

One commenter had a number of questions concerning the applicability of the new final regulations to leases and units in existence on August 8, 2005. Specifically, the commenter asked: Are the new unit provisions applicable to existing leases within an existing unit? What if they are pre-August 8, 2005, leases? Can the existing unit be declared void even though the existing unit agreement does not provide for this? The commenter also asserted that paragraphs 3280.5(a) and (b) would be inconsistent in their application, since (b) negates (a).

To clarify these provisions of the final rule, any BLM-approved unit agreements in effect prior to June 1, 2007 will continue to be administered subject to the terms of the unit agreement, and will not be voided or canceled unless that remedy is warranted under the agreement. If the unit operator seeks the BLM's approval for a modification of the agreement, such modification will be made under the regulations in effect when the BLM acts upon the modification request. Also, the new regulations will govern unit matters not expressly addressed in existing agreements. The BLM actions taken after June 1, 2007 on new unit applications or on applications pending on June 1, 2007 will be governed by the new rules.

As to leases within units, leases in effect prior to August 8, 2005, will be administered as provided under final section 3200.7, which sets out which regulations apply to each lease. As mentioned above, leases with unlike terms are not required to be modified to be included in a unit.

The BLM does not agree that section 3280.5(b) negates section 3280.5(a). Although the BLM cannot require that leases be modified to be included in a unit, the BLM may obtain the consent of lessees to establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases, and make conditions with respect to the leases, with the consent of the lessees, in connection with the creation and operation of any such unit agreement as the BLM may consider necessary or advisable to protect the public interest. Lessees will generally have an incentive to provide such consent because under final section 3281.19, the BLM cannot approve a unit agreement that does not protect the public interest.

Final section 3280.6 provides that the BLM can require a unit agreement that applies to lands owned by the United States to contain a provision under which the BLM or an entity designated in the unit agreement can alter or modify, from time to time, the rate of resource exploration, development, or production quantity or rate under the unit agreement. This final section implements 30 U.S.C. 1017(c).

Final section 3280.7 clarifies that the BLM cannot require lands that are not under Federal administration to be committed to a unit.

Subpart 3281—Application, Review, and Approval of a Unit Agreement

Final subpart 3281 reorganizes the application, review, and decision procedures for unit area designation and the unit agreement into a sequential, step-by-step, description. The final regulations describe in detail the steps to follow and the information a prospective unit operator has to submit, as well as the process the BLM follows to make application decisions. The first step is for the BLM to designate the unit area.

Final section 3281.1 makes clear that before a unit agreement is effective, the BLM must designate the unit area and approve the unit agreement.

Final section 3281.2 provides a list of information that the unit operator must submit before the BLM can make a unit area designation. The prospective unit operator will be required to submit a geologic report, a map of the final unit area, a list of leases and tracts located in the final unit area, and any other information the BLM requires.

Final section 3281.3 provides more detail on the types of geologic information the unit operator should provide to document that the final unit area is geologically contiguous and suitable for exploration, development, and production of the resource.

Final section 3281.4 makes it clear that final unit areas are not required to be of a specific size or shape, but the size can cause the BLM to require the drilling of more than one unit well to meet minimum initial unit obligations.

Final section 3281.5 explains how the BLM will resolve conflicts between unit applications that contain overlapping areas. If separate unit applications overlap, the BLM can: (1) Approve the unit application designation which best meets public interest requirements; (2) Designate a different unit area; or (3) Require revision of the applications. The BLM will not approve any final unit agreement if it included lands committed to another unit agreement already in effect.

A change from the proposal is included in final section 3281.5(b) to make it clear that the BLM can reject an application or a portion of an application for a unit. This revision provides the BLM with greater flexibility when reviewing unit applications. Should a unit application involve lands already committed to a unit agreement, this revision will allow the BLM either to reject only the overlapping portion of the application, or to reject the entire application.

A commenter expressed concern about how the BLM, under section 3281.5, will handle a unit area application that overlaps an existing approved unit area and agreement. The commenter's concern is misplaced. Final section 3281.5(a) only describes procedures for reviewing competing unit applications, not situations where an application is filed for a new unit in the area of an existing effective unit. Once a unit is in effect, the BLM will not accept the submittal of a new unit application which includes lands located in an effective unit.

The commenter's concerns are pertinent, however, to a situation in which an expansion of an existing unit is proposed. The commenter asserted that lessees in an existing unit that would be overlapped by a new or expanded unit should have a voice in the formation of the new or expanded unit. The commenter suggested that at the very least the rule should require the unit operator in the original unit to consult with the lessees in its unit before expanding the unit to allow existing lessees to refuse joinder to protect their lease interest and to conserve the resource. The commenter asserted that if existing lessees are not given this protection by regulation, the methods of operation of the existing unit could be jeopardized contrary to their unit agreement, and the lessees' shares of the revenues could otherwise be diluted or reduced without their consent or justification since these are apportioned on the basis of leased acreage in the unit. The commenter stated that this situation has to be clearly defined by regulation, and not left to the BLM's discretion. Finally the commenter said that the amendments to the Geothermal Steam Act do not prohibit the BLM from adopting such a regulation.

The BLM has not made any revisions based on the comment because the regulations address these concerns. Subpart 3281 specifies that the BLM must designate a unit area prior to it becoming effective. As required through the designation review process, each prospective unit operator must contact all lessees located within each respective unit area for unit commitment. This requirement has been in effect since geothermal unitization was initiated, and it should continue to provide all potential lessees with adequate information regarding unit proposals. Although a lessee is not required to agree to the expansion, the commenter is correct that under section 3280.4 the BLM can require a Federal lessee to commit to a unit, but only if all involved interests are protected.

Expanding a unit area does not affect individual revenue share. Only revising the participating area changes revenue share. The establishment or revision of a participating area is based on the informational requirements found in subpart 3282. This information, based primarily on well testing information,

provides a strong indication of the portion of the unit area that contains resources proven to be commercial. While expanding the participating area to include additional acreage and resources may reduce the percentage of total revenues to individual lessees, this short-term reduction in revenue should be balanced by the addition of commercially proven resources that will ultimately be recovered and shared by all lessees in the participating area.

Final section 3281.6 describes how the BLM determines whether to approve unit designation and how the BLM notifies operators of the decision. Among other considerations, the BLM determines if the geologic basis for the unit area is sound for the development of the unit area. This is the principal factor in deciding whether the unit area will be designated.

Under the rule, if the BLM approves a unit area designation, the prospective unit operator initiates the steps required for unit agreement approval. Final section 3281.7 describes the information a unit operator must submit to the BLM for unit agreement approval.

Consistent with previous section 3281.3, the prospective unit operator is required to provide an opportunity for all owners of mineral rights and lease interests to join the unit under final section 3281.8 and then supply the BLM with documentation of the commitment status of each lease or tract as required by final section 3281.9. Documentation includes a signed joinder agreement or evidence the interest owners were offered an opportunity to join the unit. Under 30 U.S.C. 1017(a)(2) and section 3281.9(b), a majority interest of owners in a lease can commit the lease to a unit agreement.

Final section 3281.10 explains that the BLM reviews the commitment status documentation to insure that the prospective unit operator has sufficient control of the unit area to conduct resource development in the public interest.

Final section 3281.11 addresses the required qualifications of a prospective unit operator. The qualification requirements for unit operators have not changed. This is consistent with previous section 3282.1.

One commenter described what it thought was an inconsistency in the proposal. The commenter asserted that the text of proposed section 3281.11(b), which stated that a unit operator is not required to have an interest in the unit area, was inconsistent with proposed section 3281.10 that stated that the unit operator must have sufficient control of the unit area. We agree that the proposal may have been unclear and have made a clarifying change. Under final section 3281.11(b), a unit operator is not required to have an interest in any leases committed to the unit agreement. However, as stated at section 3281.10(a)(2), the BLM will determine if the unit operator has sufficient control of the leases committed to the unit agreement to effectively develop the resources occurring in the unit area in the public interest. Such control may be demonstrated by ownership interests, the terms of the unit agreement and other relevant documents, or by other appropriate indicia of control.

Final section 3281.12 explains that owners of geothermal rights and lease interests committed to the unit are the parties who nominate a unit operator; however, the BLM must determine if the nominee meets the qualifications before it designates the unit operator.

Final section 3281.13 addresses the formats or models for unit agreements. This section allows a unit applicant the flexibility to create a unit agreement that best matches the specific development scenario or energy market conditions in an area. The prospective unit operator can use the model unit agreement in final section 3286.1, the model with variances noted, or another format that meets the requirements outlined in the next two final regulatory sections. While previous regulations at section 3281.1 allowed for variances from a model unit agreement, the final regulations clearly describe the information that needs to be in a unit agreement should the applicant choose not to use the model agreement.

Final section 3281.14(a) is adopted as proposed (with the modification discussed below). Final section 3281.14(b) was not contained in the previous rules or the proposed rule, but has been added for the reasons discussed below. Proposed section 3281.14(b) has been redesignated and adopted as final section 3281.14(c).

Final 3281.14 does not change previous procedures related to the required provisions in a unit agreement. Previous regulations required the unit applicant to determine the minimum requirements of a unit agreement by following the model agreement. Listing the minimum requirements and terms for unit agreement should assist applicants in determining what terms and conditions are required in a unit agreement.

One commenter noted that the term (meaning ''duration,'' for purposes of this comment) of a unit agreement appears to differ from the term of a lease. The commenter asserted that the terms should not conflict, but should be consistent with each other, and that lease terms should be tied to production like unit terms.

The BLM has made clarifying changes to section 3281.14 in response to this comment. Except for the proposed model agreement, the proposed rule did not specify a term for a unit agreement. In the one section of the proposed rule addressing the issue, proposed section 3281.14(a)(5) required a unit agreement to specify a term, which the proposed rule characterized as ''typically 5 years.'' Also, that section of the proposal did not specify the basis for extending the term of a unit agreement. Article 18.1 of the proposed model agreement, on the other hand, unequivocally stated that the term of a unit agreement is in fact (not just ''typically'') 5 years, and also specifically provided for extensions. Proposed Article 18.1 specified that unit agreements would be extended if ''unitized substances are produced or utilized in commercial quantities, in which event the agreement shall continue for so long as unitized substances are produced or utilized in commercial quantities.'' This basis for extension, *i.e.*, tying units to production, appears to be what the commenter was seeking.

To make the issue clear and eliminate the differences between proposed section 3281.14(a)(5) and proposed Article 18.1 of the Model Agreement, the final rule does not include the ''typically 5 years'' language in final section 3281.14(a)(5), but instead adds a new paragraph (b) to section 3281.14 to clarify the term of a unit and the bases for extension. Final section 3281.14(b) contains the substance of Article 18.1 of the Model Agreement. Although repetitive, final Article 18.1 is adopted as proposed so as not to confuse persons relying on the model agreement.

As to the commenter's concern over the differences in duration between leases and units, this difference has not caused problems since the Geothermal Steam Act went into effect in 1970. The initial term of a unit has always been 5 years since the Geothermal Steam Act was made effective. There are numerous options for the extension of terms of either a lease or a unit so that either may remain in effect. By statute, leases have always had a primary period of 10 years that may be extended. For instance, once a lease goes into production, the term of the lease is extended for as long as production continues. Additionally, as provided at section 3207.17(a), the BLM may extend the term of a lease to match that of the unit if the lease would expire prior to the unit (see section 3207.15 for details of production extensions for leases, and sections 3284.5 and 3284.11, describing how

unit operations affect lease extensions). The term of the unit may also be extended further if drilling occurs outside of the participating area, but inside of the unit area. Because the terms of both a unit and the terms of the leases located in the participating area are extended as long as production continues, the different durations of the initial terms do not cause significant problems.

Final section 3281.15 lists the minimum initial unit obligation information that the unit agreement must contain. To meet the minimum initial unit obligation, the unit operator must diligently drill and complete at least one unit well. The information required by this section is used to insure that the well is: (1) Located on a tract committed to the unit agreement; (2) Drilled to the depth or geologic formation specified in the unit agreement, unless commercial resources are found at a shallower depth; and (3) Completed within the timeframe specified in the unit agreement. Depending on the size of the unit, the BLM can require the drilling of more than one unit well to meet the minimum initial unit obligation. Since the unit well, by definition, must be designed to produce or utilize resources in commercial quantities, the completion of a narrow diameter well can satisfy the initial obligation only if the well is capable of production in commercial quantities. The BLM will make this determination on a case-by-case basis. Other exploration operations, such as drilling temperature gradient wells, can also be used to satisfy part of the minimum initial unit obligation.

Final section 3281.16 clarifies the previous practice to submit Plans of Development for the unit at the time of unit designation, and for future activities not addressed in a previous Plan of Development. Plans of Development must be submitted to the BLM for future unit activities until the time a producible unit well is completed and begins commercial operations.

Final section 3281.17 describes the information that a unit operator must include in a Plan of Development. While the scope and types of activities described in the Plan of Development may vary, a Plan of Development must include the completion of at least one unit well.

Final section 3281.18 makes it clear that the BLM will not designate a unit area until the Plan of Development ensures that unit activities will meet the public interest requirements.

Final section 3281.19 discusses the BLM's response to a final unit agreement. In all instances, the BLM's review of a final unit agreement must conclude that approval of the unit complies with these regulations and is in the public interest. This section of the final rule also requires the BLM to coordinate the review of a final unit agreement with appropriate State and other Federal surface management agencies. This is consistent with current practice. Under this section the BLM provides the applicant with written notification of unit rejection or approval.

Final section 3281.20 establishes the effective date of an agreement as the first day of the month following the BLM approval. The unit operator has the option of requesting that the effective date be the first day of the month in which the BLM approved the agreement, or a different date if agreed to by the BLM.

Subpart 3282—Participating Areas

Final subpart 3282 defines several procedural requirements regarding participating areas.

Section 3282.1 of the final rule defines a participating area as those portions of the unit area the BLM determines: (1) Are reasonably proven to produce in commercial quantities; or (2) Support production in commercial quantities such as through pressure support from injection wells.

Final section 3282.2 explains that commercial operations cannot begin before the BLM approval of a participating area. This is necessary to ensure proper allocation of production and royalties within the unit.

Final section 3282.3 specifies that a unit operator must propose a participating area the earlier of 30 days before starting commercial operation, or 60 days after the BLM determines a well will produce or utilize geothermal resources in commercial quantities.

Final section 3282.4 describes the general information (*e.g.*, maps showing all tracts and lease information) that the unit operator must submit to the BLM when applying for a participating area.

Final section 3282.5 describes the technical information (*e.g.*, interpretations of well performance and geology documenting the tracts contributing to production) that the unit operator must submit to the BLM when applying for a participating area.

Final section 3282.6 specifies the circumstances requiring a unit operator to apply to revise a participating area boundary. This final section also allows unit operators to request a delay in modifying participating area boundaries when active drilling is not complete.

Information on the establishment of an effective date for new or revised participating areas is contained in final section 3282.7. This section provides flexibility in establishing the effective date of a participating area, provided the date is not earlier than the effective date of the unit agreement.

Final section 3282.8 establishes the following three reasons for rejection of a revision of a participating area: (1) If the unit operator does not supply the required information; (2) If the information does not support approval; or (3) If the revision reduces the size of the participating area because of resource depletion in a certain area within the participating area. The third reason is included as a matter of equity because a lessee should not lose the benefit of unitization if its resources are depleted before other resources in the participating area. To provide otherwise would serve as a disincentive to having a lease's resources developed early in the life of a participating area.

Final section 3282.9 provides that production must be allocated equally to all lands in a participating area that are committed to the unit agreement. For instance, if a lessee owns or controls full interest in 100 acres within a participating area of 1000 acres, that lessee will be allocated 10 percent of the production from the participating area.

Final section 3282.10(a) specifies that unleased Federal lands located within the participating area receive a proportionate allocation of production for royalty purposes as if the acreage were committed to the participating area. Final section 3282.10(b) specifies that the unit operator is primarily liable for paying, and must pay, royalty to the United States for the allocated production on these unleased Federal lands. The phrase ''is primarily liable for paying'' is added as a clarification. The proposed rule established the unit operator payment obligation, but did not expressly mention liability.

The final rule also clarifies that in the event the unit operator does not pay any royalties owed for production from unleased Federal lands, each lessee of lands committed to the participating area is responsible for paying such royalties in the same proportion as that lessee's percentage of surface acreage within the participating area, excluding the unleased acreage. This secondary responsibility imposed upon the lessees is justified because if the lessees receive benefits from the resource produced from unleased Federal lands, they should also retain some responsibility to ensure that royalties are paid to the United States for such production.

Proposed section 3282.10(b) would have provided that if the BLM is not allowed to lease the unleased Federal lands in the participating area because of restrictions based on planning decisions or other statutory requirements, the lands would not receive an allocation of production. The BLM has decided not to adopt proposed section 3282.10(b). The final rule requires that any unleased Federal lands in the participating area must receive an allocation of production for royalty purposes. The BLM has concluded that if a unit operator is draining the resource from unleased Federal lands, payment of a proportionate royalty to the United States serves the public interest, regardless of whether the BLM can actually lease the lands. Removal of the proposed restriction does not open withdrawn lands to leasing or entry, but assures that the United States will receive a fair return if federally-owned resources from the unleased lands are produced from wells on adjoining leases.

One commenter asserted that if a developer has private lands and needs peripheral stranded Federal lands, he should be allowed to unitize to include those unleased Federal lands. The BLM agrees that unleased Federal lands may be included in a geothermal unit and in the participating area so that drainage from such lands from geothermal wells on adjoining lands may be considered to be allocated production from the unit and appropriate payments are made to the United States under section 3282.10. Although it can receive payments attributable to production of geothermal resources from unleased Federal lands, the United States will not be responsible for any portion of the costs of such production without statutory authorization and appropriation of funds for that purpose. Moreover, no surface disturbance on or other entry into the unleased Federal lands may occur without express BLM authorization separate and apart from approval of the unit and participating area.

If the unleased Federal lands contain geothermal resources into which a well needs to be drilled to develop the geothermal resources fully, a person can attempt to have such lands leased by nominating such Federal lands to be included in a geothermal lease sale. If the unleased Federal lands are only necessary for the placement of surface facilities related to development of geothermal resources on adjacent leases or tracts, a person can apply to use the Federal surface under the BLM's right-of-way regulations under 43 CFR part 2800 or for a lease, permit, or easement under 43 CFR part 2920, whichever is applicable. However, if the lands are withdrawn or otherwise restricted from leasing, entry, or surface occupancy, such development and uses of the lands may not be possible.

Final section 3282.11 explains that the BLM may determine that a participating area can continue where only intermittent production is occurring, provided such a determination is in the public interest. The regulations describe direct use facilities that only utilize geothermal resources during winter months as an example of intermittent production that the BLM considers to be in the public interest.

Final section 3282.12 provides that a participating area will terminate when the unit operator either permanently stops commercial operations, or 60 days after receiving notification from the BLM that operations are not being conducted in accordance with the unit agreement, participating area approval, or the public interest. If the unit operator can demonstrate that the BLM's reason for termination is in error or the situation warranting the termination has been rectified, the BLM may decide not to terminate the participating area.

Subpart 3283—Modifications to the Unit Agreement

Final subpart 3283 establishes how to modify a unit agreement. This final rule adds new provisions to specify the conditions under which a unit operator can request an extension of the unit contraction date and/or a partial contraction of the unit area. Providing this flexibility for unit administration decisions by the BLM is necessary since a unit operator can spend substantial amounts of money discovering commercial resources which cannot be immediately developed due to conditions beyond the operator's control. An inability to place portions of a unit into production can subject leases to termination where either commercial resources have been found or monitoring or injection wells not directly involved in production are located. Termination would reduce additional exploration and development in the unit area, which is contrary to the public interest.

Final section 3283.1 provides that a unit operator can request a modification of the unit agreement after all unit interests have agreed to the change in the agreement. After review, the BLM notifies the unit operator in writing of the BLM's decision and effective date of approval, if applicable.

Final section 3283.2 discusses circumstances under which the unit operator can request the BLM to revise contraction provisions of a unit agreement. Contraction provisions of a unit agreement describe how lands are removed from the unit agreement as exploration and development activities determine which lands are not capable of producing geothermal resources in commercial quantities. Under this section, an operator can also propose an extension of the unit contraction date and/or a partial contraction of the unit area. This section outlines both the information the operator must provide and information the operator should provide to the BLM in support of a request to revise contraction provisions of the unit area. The BLM will approve the request if we determine that revision is in the public interest. The BLM may also add conditions to the approval such as requiring an annual renewal or setting the timing and conditions for when phased contractions or termination of the revision can occur.

Final section 3283.3 addresses how a unit operator will know the status of a unit contraction revision request. Under the final rule, the BLM will notify the unit operator in writing of its decision. If the BLM approves the request, it will specify the term of the contraction extension and/or which lands will remain in the unit agreement. The BLM may require the unit operator to update the information required by final section 3282.3. Also, the BLM could terminate the participating area contraction revision if, in the public interest, it finds it necessary to do so.

Final section 3283.4 addresses adding or removing lands from an agreement when the BLM determines, based on information submitted by the unit operator, that new or additional geologic information modifies the basis for the unit boundary. Once the BLM notifies the unit operator of approval of the revision to the unit, the unit operator must notify all interest owners in the unit area revision.

Final section 3283.5 implements 30 U.S.C. 1017(f), which requires review of unit agreements at 5-year intervals to eliminate any lands in the unit area not necessary for unit operations. A commenter stated that a requirement for the BLM to review all unit agreements every 5 years is burdensome and potentially unnecessary. The commenter asserted that, given the BLM's limited resources, this appears to be a poor allocation of funds, particularly since there does not appear to be any history of problems to justify this priority. The BLM did not make changes to the rule based on this comment. The 5-year review

requirement is necessary to implement a statutory obligation.

Final section 3283.6 describes the purpose of the periodic review, the basis for eliminating lands from the unit, and the consequences of elimination on leased lands.

A commenter objected to the standard for eliminating leases from a geothermal unit. The commenter stated that the term ''not reasonably necessary'' is too subjective a basis for eliminating lands from a unit. The commenter requested that the regulation should include identifiable criteria for making such decisions.

The BLM did not change the rule based on the comment. This standard in final section 3283.6 comes from the 1988 amendment of the Geothermal Stream Act, and is the wording the BLM has used in the regulations since then. The BLM reviews the type and intensity of unit resource exploration and development to ensure that it is being conducted within operational and environmental standards and meets public interest requirements. The BLM is not aware it has caused an issue at any time when units have been reviewed. The wording is intended to provide the BLM flexibility in administering units given the broad range of development issues that may occur. Under the rule, any BLM determination to eliminate lands from a unit must be based on scientific evidence, and occur only for the purpose of conserving and properly managing the geothermal resources. To safeguard against misuse of this provision, section 3283.6(c) provides that the BLM will not eliminate any lands from a unit until the unit operator, the lessee, and any other person with a legal interest in such lands, have been given reasonable notice and opportunity to comment. The final rule uses the active voice to clarify that it is the BLM that provides the notice and opportunity for comment. The proposal was not clear because it used the passive voice.

Final section 3283.7 provides that unit operators may be changed only with the BLM's written approval.

Final section 3283.8 describes the requirements for a new operator. The new operator must meet the qualification requirements of these regulations, submit evidence of adequate bonding for Federal lands, and provide to the BLM written acceptance of the unit terms and conditions. A minor change from the proposal is included in final paragraph (a) to clarify that the ''qualification'' requirements are the ones to be met.

Final section 3283.9 provides that the change of unit operator is effective when the BLM approves the new operator in writing.

Final section 3283.10 explains that the initial unit operator remains responsible for all duties and responsibilities until the BLM approves the new unit operator. This section also makes it clear that initial unit operators remain responsible for liabilities and obligations that accrue before a new unit operator is approved.

Final section 3283.11 acknowledges that a unit agreement does not modify stipulations in Federal leases. While certain lease obligations are altered by commitment of lands to a unit, lease stipulations, such as those designed to protect the environment or other resources, are not superseded by the terms of a unit agreement.

Final section 3283.12 specifies that transferees and successors in interest acquiring Federal geothermal leases committed to a unit agreement are bound by the terms and conditions of the unit agreement.

Subpart 3284—Unit Operations

Final subpart 3284 discusses unit operations, unit operator responsibilities for those operations, and how the BLM administers operational situations.

Final section 3284.1 acknowledges current practice that all phases of unit operations are required to comply with the terms and conditions of the unit agreement and operational standards and orders identified in the exploration (subpart 3250), drilling (subpart 3260), and production and utilization (subpart 3270) subparts of this rule.

Responsibilities of the unit operator are described in final section 3284.2. In general, the unit operator has primary responsibility to diligently explore and drill for, and to produce and inject, unitized geothermal resources. A separate entity can own and operate utilization facilities located within the unit area, but only the unit operator is authorized to produce and inject unitized resources and supply geothermal resources to any utilization facilities, regardless of whether the location of such facilities is within the unit. Other working interests are not authorized to conduct any drilling activities under subpart 3260 on leases committed to a unit agreement without the BLM approval. The unit operator works with the BLM and the MMS to make unit changes and must insure all moneys owed to the Federal Government for geothermal activities are paid.

Final section 3284.3 discusses what happens to the unit agreement and leases committed to the agreement if the minimum initial unit obligations are not met and how unit operations can affect extension of lease terms. If the initial unit well obligations are not met or the unit operator relinquishes the agreement before meeting the initial unit obligations, the agreement will be voided as if it was never in effect, any lease segregations that occurred as a result of unit formation become invalid, and any extensions issued will be retroactively voided to the date the unit became effective.

Final section 3284.4 addresses actions necessary to maintain a unit agreement after a unit well has been completed. If a unit well is determined by the BLM to be producible, the unit operator must submit a final participating area application and, if no additional wells are drilled, the unit area will contract to conform to the participating area. If a unit well does not produce or utilize geothermal resources in commercial quantities, the unit operator must continue drilling unit wells within the time specified in the agreement until a unit well is completed that the BLM determines produces or utilizes geothermal resources in commercial quantities. Failure to meet this obligation to drill subsequent wells results in the unit terminating at that time.

Final section 3284.5 explains how commitment of lands to a unit agreement affects lease terms. Under final section 3284.5(a), lease extensions granted based on commitment to the unit agreement remain in force while the unit is in effect. Under final section 3207.17, a lease can receive an extension if it was committed to a unit agreement and would expire prior to the unit term expiring. Therefore, we added a cross-reference to section 3207.17 in final section 3284.5(a). If the unit operator has diligently pursued unit development, a lease can receive an extension to match the term of the unit. Final section 3284.5(b) is adopted as proposed, but corrects a mistaken cross-reference that was contained in the proposed rule.

Final section 3284.6 addresses drilling done by working interest owners other than the unit operator. The BLM may approve drilling outside the participating area only when the BLM determines the unit operator is not diligently developing the resource and drilling is in the public interest. Should a working interest owner complete a well which will produce or utilize geothermal resources in commercial quantities, the unit operator must apply to include the well in the participating area and operate the well.

Final section 3284.7 allows a lessee or operator to conduct operations on an uncommitted Federal lease located within a unit if the BLM determines that it is in the public interest and does not unnecessarily affect unit operations.

Final section 3284.8 establishes that a unit can only have one operator. Given the nature of most geothermal resources, multiple unit operators would likely violate the purpose of the unit agreement that all of the resources within the unit be developed as if they were part of one operation. If multiple operators of a unit were allowed, then they could separately develop the resource, the resource would not necessarily be conserved, and the public interest would not be served. In effect, the purpose of having a unit would be defeated.

One commenter expressed concern about the possibility of two unit operators if multiple units exist on overlapping land. As stated earlier, the BLM will not approve separate unit agreements with overlapping lands, so that the situation about which the commenter is concerned will not occur. However, in advance of unit approval, multiple prospective unit operators may propose a variety of unit areas. The designation review and final approval process is designed to insure the unit agreement which is finally made effective by the BLM best meets public interest requirements.

Final section 3284.9 allows the BLM to set or modify the rate of production or injection within the unit area to ensure protection of Federal resources.

One commenter asserted that in a unit, it should be the developer's choice to direct injection or production rates and that the BLM should not be in a position to tell how the plant should be operated. The BLM disagrees with the comment. This provision is essentially unchanged from the previous regulations, with the exception of the addition of the qualifying phrase ''to ensure protection of Federal resources.'' The BLM has always had the authority to direct the lessee's injection or production rates to ensure that the lessee protects Federal resources. Article 10.5 of the previous model unit agreement specified that the BLM has the authority to modify the rate of prospecting and development conducted by the unit operator, as well as the quantity and rate of production. This authority is necessary to ensure protection and conservation of the Federal resources. In practice, exercise of this retained authority has led to few, if any, unresolved disputes.

Final section 3284.10 articulates the unit operator's responsibility to prevent drainage of the unit area and ensure compensation (royalties) for drainage of geothermal resources from unitized land by wells not subject to the unit agreement.

Final section 3284.11 establishes that development and production from the unit, regardless of location within the unit, fulfills the diligent development requirements for all leases within the unit.

Final section 3284.12 requires unit operators to notify the BLM within 30 days of a change in the commitment status of any lease or tract within the unit, regardless of ownership.

Subpart 3285—Unit Termination

Unit agreement termination is discussed in final subpart 3285.

Final section 3285.1 provides that the BLM may terminate a unit agreement if the unit operator does not comply with any term or condition of the unit agreement.

Final section 3285.2 allows a unit operator to request BLM approval of a voluntary unit agreement termination after the initial unit obligation well is completed and before starting commercial operations. This can occur when the appropriate percentage of working interest owners, as specified in the unit agreement, agree to the termination. If commercial operations are occurring, the unit will remain in effect until all commercial operations cease.

Subpart 3286—Model Unit Agreement

Subpart 3286 provides a model unit agreement. Applicants for unit agreements are not required to use this model (see final section 3281.13). For the most part, the final rule adopts the revisions to the previous model agreement as proposed. Changes either from the previous rule or from the proposed rule are discussed below.

Article 1.1 of the final model agreement clarifies that it is the U.S. Department of the Interior regulations that are accepted, including both BLM and, where applicable, MMS regulations. Article 1.2 of the final model agreement clarifies that BLM operating regulations are accepted for non-federal lands within the unit and are made part of the unit agreement. The proposed model agreement did not expressly identify which agency's rules were accepted. The BLM views this as a non-substantive change because it is a clarification of what was intended in both the previous and proposed rules.

This rule adopts several revisions to Articles IV and XI of the previous model unit agreement. In these Articles, the previous model agreement referred to a ''Plan of Operation.'' The term ''Plan of Development'' is used in the final model agreement, instead, to replace Plan of Operation. This change clarifies overall permit application requirements since a Plan of Operation is part of the well drilling and testing application (sections 3261.11 and 3261.12), and is not related to the review of a unit agreement. The requirements of the Plan of Development are not substantially changed from those of the previous Plan of Operation.

Article IV of the final unit model agreement addresses automatic contraction of the participating area. Under Article IV, unitized lands that are not entitled to be within a participating area on the fifth anniversary of the effective date of the initial participating area are eliminated automatically from the unit agreement effective as of the fifth anniversary, with one exception. Under the exception, lands are not automatically eliminated from the unit agreement if diligent drilling operations are in progress on an exploratory well on the fifth anniversary. Under such circumstances, the lands covered by the exploratory drilling are not eliminated from the unit area for as long as exploratory drilling operations are continued diligently, with not more than 6 months elapsing between the completion of one exploratory well and the commencement of the next exploratory well. The previous rule required the unit to contract to the participating area if no more than 4 months, rather than 6 months, elapsed between exploratory wells. The expansion from 4 months to 6 months is referenced in a number of places in Article IV of the Model Agreement in the final rule. Expansion of this time frame to 6 months before contraction occurs provides the unit operator with greater flexibility, particularly when attempting to obtain drilling equipment. In addition, Article 4.6 provides that the BLM can authorize a specified time period in excess of 6 months between the completion of one exploratory well and the beginning of another without elimination of lands from the unit.

An editorial change from the proposed rule was made in final Article 4.7 to insert a word that was missing from the proposed rule.

We are adopting several modifications to previous Article XI. A unit operator was previously required to initiate drilling an exploratory well within 6 months after the effective date of the unit agreement. This rule modifies this requirement to allow the unit operator to conduct exploration operations as well as drilling a well to meet unit diligent development requirements. A

unit operator must complete at least one unit exploration well before the end of the term of the unit agreement or the unit will be voided and leases will not receive any benefit of unit commitment. Article XI of the previous model agreement specified that the BLM can only grant a single extension of drilling obligations of no longer than 4 months. The final rule modifies the model to allow the BLM to grant multiple extensions of time frames to meet public interest requirements. This greater flexibility in unit administration is needed to cover a wide variety of development issues facing unit operators that are beyond their control. Language in Articles 11.5 and 11.7 referring to the ''actual production of unitized substances'' is changed to ''completing a well capable of producing or utilizing unitized substances in commercial quantities.'' This change allows the minimum initial unit obligation to be met either through the timely completion of a producible unit well or the initiation of actual production of unitized resources.

The final rule substantially shortens Article XV of the model agreement, related to rents and royalties. Final Article XV does not repeat substantive regulatory requirements related to rentals, royalties, rental credits, etc., which are addressed in final subpart 3211. This is not intended as a substantive change because these matters are addressed fully in both the BLM and the MMS rules (see, e.g., 43 CFR subpart 3211 and 30 CFR part 306, subpart H, and 30 CFR 318.303) and in the applicable lease instruments themselves. The key point that both the proposed and final Article XV contain is that nothing in the model agreement operates to relieve the lessees of any land from their respective lease obligations for the payment of any rental or royalty due under their leases. Repeating the requirements in the model agreement would have been complex because geothermal units can consist of leases subject to different rental and royalty terms. A restatement in Article XV might not have been complete or accurate. Final Article XV retains Article 15.1 from the previous and proposed model agreements related to unitized leases on non-Federal land. Final Article 15.3 also states, as was contained in proposed Articles 15.3 and 15.5, that rentals and royalties may be paid by working interest owners or by a unit operator.

Final Article 17.7 has been modified from the proposal to reflect that lease extensions occur through ''regulation'' as well as by ''law.'' A sentence has been added to that Article stating that the BLM has adopted a procedure in final section 3207.17 for granting lease extensions for leases committed to a unit to match the term of the unit. The sentence provides that if it is appropriate for the BLM to extend the term of a lease to match the term of the unit, the unit operator shall take the actions required for such extension under 43 CFR 3207.17. Under that section, the unit operator must send the BLM a request to extend the term of a lease committed to a unit at least 60 days before the lease expires.

We are also adopting editorial revisions to the model agreement. For instance, references in the previous model agreement to the ''Director'' are changed to the ''Authorized Officer,'' the person within the BLM with the authority to make final decisions.

We are removing the following sections in subpart 3286 because the BLM does not require submission of information in the specified formats and the information contained in these sections is found elsewhere in the final rule: section 3286.1–1 Model Exhibit ''A''; section 3286.1–2 Model Exhibit ''B''; section 3286.2 Model unit bond; section 3286.3 Model designation of successor operator; and section 3286.4 Model change of operator by assignment.

Subpart 3287—Relief and Appeals

This subpart addresses situations where unit operators seek relief from the obligations of the unit agreement and wish to appeal a BLM decision under this part.

Final section 3287.1 allows a unit operator to request a suspension of any or all obligations under the unit agreement.

Final section 3287.2 lists the circumstances that may warrant the granting of a suspension of unit obligations. Typically they include situations beyond the unit operator's control, such as accidents, labor strikes, or Acts of God. Under this provision, the BLM can decide not to grant a suspension of unit obligations, especially the minimum initial obligation, when lengthy or indefinite periods of time are involved. For example, the BLM might not approve a suspension of minimum initial drilling obligations due to a unit operator's inability to obtain an electrical sales contract or when poor economics affect the electrical generation market, limiting the opportunity to obtain viable sales contracts.

Final section 3287.3 describes how a suspension of unit obligations affects the terms of the unit agreement. This section explains that the BLM has the discretion to toll certain provisions of the unit agreement while allowing others to remain in effect. The BLM specifies the terms of the suspension. The rule obligates the unit operator to notify all interests in the agreement of any suspension that is granted and the terms of the suspension. The wording of the final notification provision has been changed from the proposed rule to clarify that unit interests are to be notified of any suspension granted, and not just of changes in unit agreement obligations.

Final section 3287.4 allows a unit operator to appeal decisions the BLM makes regarding unit agreement administration or operations.

IV. Procedural Matters

Effective Date

This rule becomes effective 30 days following publication, rather than 60 days, because the Department and the Geothermal Industry are interested in having competitive geothermal lease sales as soon as possible. Lease sales cannot be held until these rules become effective because it is these rules that prescribe key terms and conditions of new leases, such as royalty rates and rentals. In addition, the statute authorizes 2 year extensions of leases issued before August 8, 2005 that were within 2 years of the end of their terms on August 8, 2005. Having this rule become effective sooner will assure that lessees of such leases will have sufficient time to apply for any necessary extensions.

Executive Order 12866, Regulatory Planning and Review

This final rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The regulatory changes in the nomination and leasing process, royalty system, and diligence requirements are the only provisions in the rule with potential economic impacts. However, as explained in the Regulatory Flexibility Act Threshold Analysis that follows, the royalty provisions are intended to be revenue-neutral program-wide for the next 10 years, and should not have any significant economic impact.

These regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the geothermal program with other

agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule. We coordinated closely with the MMS in preparing the rule.

These regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA). The Threshold Analysis under the RFA follows.

The U.S. Census Bureau does not identify the geothermal industry as a discrete industrial classification. Instead, firms involved in exploration and development of geothermal resources are included within other categories. For example, geothermal drilling is grouped with water well drilling; firms involved in the distribution of steam are included with steam and air-conditioning suppliers; and firms generating electricity from geothermal resources are grouped in an Other Electric Power Generation category. As a result, there is no practical way to use the U.S. Census Data to calculate the number of entities involved in the domestic geothermal industry.

As of September 30, 2004, there were 259 noncompetitive Federal leases covering 364,506 acres in Arizona, California, Idaho, Nevada, Oregon, and Utah. Almost 300,000 of those acres are located in Nevada. There were also 140 competitive leases covering 186,683 acres in California, Nevada, New Mexico, Oregon and Utah. Approximately 170,000 of those leased acres are located in California and Nevada.

Although this rule will only affect entities involved in the exploration and development of energy and mineral resources from land where the geothermal resources are administered by the BLM, there is no practical way to determine which of these firms will hold leases or operate on Federal lands in the future. The extent to which any firm is actually affected by this rule depends on whether it holds leases or operates on Federal lands.

The Small Business Administration (SBA) defines small entities involved in the geothermal industry as individuals, limited partnerships, or small companies considered at ''arm's length'' from the control of any parent companies, with fewer than 500 employees.

U.S. Census data on firms by number of employees is not available. However, based on interviews of the BLM specialists involved in geothermal leasing activity and several industry representatives, and reviews of company reports, there appears to be only one known firm currently operating on Federal lands with more than 500 employees.

Based on available information, the preponderance of firms involved in geothermal resource exploration and development on Federal lands are small entities as defined by SBA. Therefore, it is reasonable to conclude that this rule will affect a ''substantial number of small entities.''

The regulatory changes in the nomination and leasing process, royalty system, and diligence requirements are the only provisions in the rule with potential economic impacts. However, the royalty provisions are intended to be revenue-neutral program-wide and should not have any net economic impact. The nomination filing fee is $100 per nomination, plus 10 cents for each acre of land nominated for competitive sale. This fee will have a negative financial impact on lessees, including small entities. The BLM is authorized to charge reasonable filing fees under Section 304(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1734(a). While our general policy is to charge a processing fee that recovers the agency's reasonable processing cost, the BLM does not have data on our cost of processing nominations. In 2004, the BLM issued 29 competitive and noncompetitive geothermal leases, covering 45,706 acres. With the fees, the cost of acquiring those leases would have been increased by $2,900 due to the fixed nomination fee, and $4,570.60 due to the per acre fee, or an average of about $250 per lease. This nominal filing fee is not intended to reimburse the government for its processing costs, but instead to limit filings to serious applicants. We do not expect the fee to lead to any reduction in the number of serious applicants. Therefore, we do not anticipate any measurable reduction in economic activity due to the regulations.

The regulations are intended to implement provisions of the Energy Policy Act related to geothermal leasing. Those provisions in the Energy Policy Act are primarily intended to promote the exploration and development of geothermal resources on Federal lands.

The annual effect on the economy of the regulatory changes is less than $100 million, as shown earlier in this section, and will not 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. This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency, also as discussed earlier. This rule does not change the relationships of the geothermal program with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this rule. In addition, this rule does not materially affect the budgetary impacts of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Therefore, the BLM has determined under the RFA that this rule will not have a significant economic impact on a substantial number of small entities.

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. That is, it would not have an annual effect on the economy of $100 million or more; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. See the Executive Order 12866 and RFA discussions, above.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*): This rule does not impose an unfunded mandate on state, local, or tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor does this rule have a significant or unique effect on state, local, or tribal governments. The rule would impose no requirements on any of these entities. We have already shown, in the previous discussions and in the RFA threshold analysis, that the changes this rule makes will not have effects approaching $100 million per year on the private sector. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Government Actions and Interference With Constitutionally Protected Property Rights (Takings)

The final rule is not a government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required, since the rule is essentially administrative and does not authorize any specific activities that would result in any effects on private property. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the levels of government. It would not apply to states or local governments or state or local governmental entities. The management of Federal geothermal leases is the responsibility of the Secretary of the Interior. This rule does not alter any lease management or revenue sharing provisions with the states, nor does it impose any costs to the states. Therefore, in accordance with Executive Order 13132, the BLM has determined that this rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have determined that this rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the BLM submitted a copy of the new reporting or recordkeeping requirements to the Office of Management and Budget (OMB) for review. The BLM will not require collection of this information until the OMB has given its approval. The OMB has approved information collection requirements under OMB control numbers 1004–0074 which expires December 31, 2009, and 1004–0132 which expires March 31, 2007. At the OMB's request, the BLM is in the process of combining information collection 1004–0074 and ICR Reference Number 200607–1004–001 into information collection 1004–0132.

National Environmental Policy Act

The BLM has prepared an environmental assessment (EA) and has found that the rule would not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The rule has no direct effect on BLM environmental activities and decisions. It deals primarily with changes in the leasing procedures and royalty provisions of the existing regulations. The rule will not change operational standards which regulate on the ground impacts. Therefore, an environmental impact statement is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have found that this rule may include policies that have tribal implications. The rule would make changes in the Federal geothermal leasing and management program, which does not apply on Indian tribal lands. At present, there are no geothermal leases or agreements on tribal or allotted Indian lands. If the Bureau of Indian Affairs should ever issue any leases or agreements, the BLM would then likely be responsible for the approval of any such proposed operations on all Indian (except Osage) geothermal leases and agreements. In light of this possibility, and because tribal interests could be implicated in geothermal leasing on Federal lands, the BLM contacted over 299 tribes who could potentially be impacted by this rule. We received only one response from a tribal representative, who requested that they be contacted upon publication of the final rule, but otherwise received no comments from Tribes on the rule.

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

In accordance with Executive Order 13211, the BLM has determined that the rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The changes could result in an increase in geothermal leasing and development, but any potential increases are only speculative. If geothermal leasing and development did increase, that would likely have a positive effect on energy supply.

Executive Order 13352—Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this final rule will not impede facilitating cooperative conservation; takes appropriate account of and considers the interests of persons with ownership or other legally recognized interests in land or other natural resources; properly accommodates local participation in the Federal decision-making process; and provides that the programs, projects, and activities are consistent with protecting public health and safety. The changes are essentially administrative in nature and will not have a bearing on cooperative conservation issues.

Regulatory Flexibility Act Threshold Analysis

Introduction

The Regulatory Flexibility Act (RFA) requires agencies to analyze the economic impact of proposed and final regulations and determine the extent to which there is a significant economic impact on a substantial number of small entities, and to consider regulatory alternatives that would achieve the agency's goal while minimizing the burden on small entities. The RFA establishes an analytical process for determining how public policy goals can best be achieved without erecting barriers to competition, stifling innovation, or imposing undue burdens on small entities. Executive Order 13272 reinforces executive intent that agencies give serious attention to impacts on small entities and develop regulatory alternatives to reduce the regulatory burden on small entities. To meet these requirements, the agency must either conduct a regulatory flexibility analysis or certify that the final rule will not have ''a significant economic impact on a substantial number of small entities.''

Number of Potentially Affected Entities

Entities that will be directly affected by this Geothermal Resource Leasing rule will include most, if not all, firms involved in the exploration and development of geothermal resources on Federal lands. Such operators are a subset of entities involved in the domestic geothermal industry.

The U.S. Census Bureau does not identify the geothermal industry as a discrete industrial classification. Instead firms involved in exploration and development of geothermal resources are included within other categories. For example, geothermal drilling is grouped with water well drilling; firms involved in the distribution of steam are

included with steam and air-conditioning suppliers; and firms generating electricity from geothermal resources are grouped in an ''Other Electric Power Generation'' category. Therefore, there is no practical way to use the U.S. Census Data to calculate the number of entities involved in the domestic geothermal industry.

There are a limited number of entities that currently hold Federal geothermal leases. As of May 19, 2006,[1] there were 69 different geothermal lessees identified; however, many of these lessees are composed of the same firms, individuals, and partnerships.

The latest published Public Land Statistics [2] data indicates there were 259 noncompetitive leases covering 364,506 acres in Arizona, California, Idaho, Nevada, Oregon and Utah. Almost 300,000 of those acres are located in Nevada. There were also 140 competitive leases covering 186,683 acres in California, Nevada, New Mexico, Oregon, and Utah. Approximately 170,000 of those leased acres are located in California and Nevada. During FY2004, 24 non-competitive geothermal leases were issued covering 37,453 acres, along with 5 competitive leases covering 8,253 acres.

Geothermal leases are issued with a primary term of 10 years. After the primary term the lease may be extended twice for up to 5 years each time. Currently there are 29,801 leased acres in non-producing status that have been under lease for 11 to 15 years, and another 107,335 acres that have been under lease for 16 to 19 years.[3]

Although this rule will only affect entities involved in the exploration and development of geothermal resources administered by the BLM, there is no way to determine which firms will hold leases or operate on Federal lands in the future. The extent to which the final rule has an actual impact on any firm depends on whether it holds leases or operates on Federal lands.

Impacted Small Entities

The Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act; those size standards can be found in 13 CFR 121.201. The SBA defines small entities involved in the geothermal industry as individuals, limited partnerships, or small companies considered at ''arm's length'' from the control of any parent companies, with fewer than 500 employees.

U.S. Census data on firms by number of employees is not available. However, based on interviews of BLM specialists [4] involved in geothermal leasing activity and several industry representatives, and reviews of company reports, there appears to be only one known firm currently operating on Federal lands with more than 500 employees.

Based on available information, the preponderance of firms involved in geothermal resource exploration and development on Federal lands are small entities as defined by SBA. Therefore, it is reasonable to conclude that this rule will impact a ''substantial number of small entities.''

Direct Economic Impacts

The changes to the geothermal rule fall into a number of different areas: competitive and noncompetitive leasing, direct use leases, royalties and rentals, lease terms and conditions, unit and communitization agreements, acreage limitations, and termination provisions. However, most of the new provisions in the final rule are specifically required by the Energy Policy Act of 2005.

A major concern voiced by some industry representatives regarding the pending changes is that the requirement in the Energy Policy Act eliminated the process of applying for noncompetitive leases directly to BLM and required all leases to be offered competitively. The concern is that this provision will limit future exploration and development on Federal lands, and decrease competition within the industry. Their position is that noncompetitive leasing promotes innovation and the exploration of undeveloped resources. These concerns are worth noting; however, the requirement that all leases must first be offered competitively is included in the rule because it is a requirement of the law.

This final rule provides for the following:

<bullet≤ All parcels may be leased competitively for no minimum bid;

<bullet≤ Royalties for most new leases will be a percentage of gross proceeds;

<bullet≤ When lessees elect to convert existing leases to leases administered under these final regulations, royalty rates will be determined on a case-by-case basis to obtain revenue neutrality;

<bullet≤ Nominations for competitive leasing will be charged filing fees;

<bullet≤ Minimum dollar amounts will be set for the work commitment requirements and payments in lieu of work expenditures; and

<bullet≤ Near-term production incentives will be provided.

Impact Significance

In addition to determining if a substantial number of small entities are likely to be affected by this final rule, the BLM must also determine whether the rule is anticipated to have a significant economic impact on those small entities. The RFA does not define ''significant.'' However, significance should be seen as relative to the size of the business, the size of the competitor's business, and the impact the regulation has on larger competitors.

Royalty—The Energy Policy Act requires that the royalty on production from all future geothermal leases be a gross proceeds royalty. Based on a report [5] prepared for the Minerals Management Service (MMS) on geothermal royalty valuation methods and a study [6] prepared by Advanced Resources International, Inc., for the BLM, this final rule implements a gross proceeds lease royalty of 1.75% for years 1 through 10 and 3.5% after year 10 for all future leases. This change is within the parameters mandated by the Energy Policy Act.

The Act also requires that for converted leases the royalty must be revenue neutral, i.e., the royalty rate applied to gross proceeds will generate no more (or less) revenue than the previous net proceeds royalty would generate if applied to those same leases.

The Act also requires that charges for direct use of the geothermal resource be based on a fee schedule rather than a royalty. The MMS developed the fee schedule for direct use, and it is included in the MMS rule that is being finalized simultaneously with this BLM rule.

Current electrical generation lessees that remain under the previous regulations will pay the same royalties as they have been paying all along. Electrical generation lessees who modify their existing leases to the new regulation's percentage of gross proceeds method should pay the same level of royalties as they have paid under the previous regulations.

[1] U.S. Department of the Interior, Bureau of Land Management, LR2000, June 1, 2006.

[2] U.S. Department of the Interior, Bureau of Land Management, Public Land Statistics 2004, (*http://www.blm.gov/natacq/pls04/*).

[3] U.S. Department of the Interior, Bureau of Land Management, LR2000, June 1, 2006.

[4] BLM contacts included Richard Estabrook (CA), Rich Hoops (NV), Sean Hagerty (CA), Donna Kauffman (OR), Connie Seare, (Utah) and Gloria Baca (NM).

[5] Royalty Policy Committee, *Geothermal Valuation Subcommittee Report*, May 2005.

[6] Advanced Resources International, Inc., *Geothermal Development on Federal Lands: Projection of Royalty Impacts Resulting from the Energy Policy Act of 2005*, January 21, 2007.

Program wide, the royalty rates for new electric generation lessees (1.75% for years 1 through 10 and 3.5% after year 10) should result in the same overall level of royalties as they would have paid under the previous regulations. Under the new royalty scheme, new electric generation lessees that use binary power plant technology will be subject to a royalty rate that is approximately 1% higher than the effective royalty rate under the previous regulations. Operations that employ flash technology will be subject to a royalty rate that is almost 2% lower than the previous effective royalty rate for that type of power generation plants.

Lessees that currently use the resource only for direct use and do not sell the resource will have the option to convert their leases to the new fee schedule, which is expected to result in a reduction of $60,000 per year from the previous level of royalties, a 95-percent reduction. In addition, all new direct use lessees who do not sell the resources under the new regulations will use the same fee schedule, also paying about 95 percent less than they would have under the previous regulations. The MMS has estimated that the royalty changes will result in royalty decreases for the industry as a result of the lower fees for direct use.

It should be noted that likely the most significant effect associated with changes in the royalty scheme are the accounting savings by converting from a netback to a gross proceeds royalty. This savings will be most pronounced for small entities that do not have a full time accounting department.

Filing Fees—The nomination filing fee of $100 per nomination plus a $0.10 per acre fee will have a minor negative financial impact on lessees, including small entities. Based on Public Land Statistics data [7], 29 competitive and noncompetitive geothermal leases, covering 45,706 acres, were issued in 2004. With the fees, the cost of acquiring those leases would have been increased by $2,900 by the fixed nomination fee and $4,570.60 by the per acre fee, or an average cost of about $250 per lease. It is highly unlikely that cost increases of this magnitude will prevent operators from obtaining leases on lands they are interested in exploring and developing. However, due to the cost of these fees, operators may tend to minimize their nominations to only those parcels that they are truly interested in obtaining.

Work Requirements—The final regulations require the operator to have made exploration expenditures of at least $40 per acre by the end of the tenth year. After the tenth year the expenditure requirement will be $15 per acre per year for years 11 to 15 and $25 per acre per year for years 16 through 19. The requirement differs from the previous regulatory requirement of $4 per acre for the 6th year, $6 per acre for the 7th year, $8 per acre for the 8th year, $10 per acre for the 9th year, $12 per acre for the 10th year, $15 per acre per year for years 11 through 15, and $18 per acre per year for years 16 through 19.

For the expenditure requirement, the required amount for the first 15 years is essentially the same as the previous requirement. For the 16th through 19th years the expenditure requirement will be 28 percent higher ($7.00 per acre) than the requirement under the previous regulations. However, the increase only applies to future Federal geothermal leases in the years 11 through 19. As discussed below, the lessees of those future leases could opt to make payments in lieu of expenditures.

Payment in Lieu of Expenditure—Both sets of regulations allow the lessee to make payments to the government in lieu of actual work expenditures. Under the final regulations the payment in lieu of work expenditures will equal the required expenditure amount; $40 per acre by year 10, $15 per acre per year for years 11 through 15, and $25 per acre per year for years 16 through 19. Under the previous regulations the payment amount is $3 per year for years six through 15 and $6 per acre per year after year 15. For lessees, including small entities, that are not producing or actively developing their leases after the tenth year, this provision will increase the cost of holding leases. However, this increase in holding costs will only apply to future leases issued under the final regulations and those who elect to be subject to these regulations.

Non-producing leases issued under these final regulations will by the 16th year of the lease term face higher expenditure and/or payment in lieu of expenditure requirements. Assuming leasing activity on par with what occurred in FY 2004, we would have approximately 45,000 acres leased per year under the final regulations. Assuming no production and no exploration expenditures on those leases, by the 16th year of those leases' term the lessees would need to pay the government $315,000 in payments in lieu of expenditures to hold those leases. This figure represents a highly unlikely worst case scenario in which all lessees simply hold on to their leases without ever attempting to explore or develop the geothermal resources.

Near Term Incentives—The final regulations provide for near term production incentives for existing leases: There is a 4-year 50 percent reduction in the royalty for those leases that do not convert, which applies to new facilities or qualified expansion projects. The provision will have a positive impact on the lessees of these existing leases.

Regulatory Analysis

Executive Order 12866, the Unfunded Mandates Reform Act (UMRA), and the Small Business and Regulatory Flexibility Act (SBRFA) require agencies to undertake an analysis of the benefits and costs associated with significant regulatory actions.

The changes in the royalty system, nomination process and diligence requirements are the regulatory provisions with potential economic impacts. However, the royalty scheme is intended to be program-wide revenue-neutral and should not have any net economic impact. The filing fee will nominally increase the cost of acquiring a lease. Based on FY2004 data, the filing fee would increase the cost of obtaining a Federal geothermal lease by an average of $250. The payment in lieu of expenditure provision will increase the cost of holding future non-producing Federal geothermal leases beyond the 15th year. As discussed above, for new leases that are not producing and are not being actively explored the payment in lieu of expenditure (holding cost) will increase by $7.00 per acre over the previous requirements. However, since these leases are neither producing nor being actively developed it is not anticipated any measurable reduction in economic activity will occur as a result of the final regulations.

The final regulations are intended to implement certain provisions found in the Energy Policy Act related to geothermal leasing. Those provisions in the Act are primarily intended to promote the exploration and development of geothermal resources on Federal lands.

The annual effect on the economy of the regulatory changes is less than $100 million and will not 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. This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the

[7] U.S. Department of the Interior, Bureau of Land Management, Public Land Statistics 2004, (*http://www.blm.gov/natacq/pls04/*).

geothermal programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule. In addition, this rule does not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients.

Authors

The principal authors of this final rule are Rich Hoops-BLM Nevada State Office, Richard Estabrook—BLM Ukiah Field Office, Cheryl Seath—BLM Bishop Field Office, Sean Hagerty—BLM California State Office, and assisted by Brenda Aird of the Assistant Secretary's Office, Kermit Witherbee-National Geothermal Program Manager, BLM's Division of Regulatory Affairs, and the Office of the Solicitor.

List of Subjects

43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3200

Geothermal energy, Government contracts, Mineral royalties, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Water resources.

43 CFR Part 3280

Geothermal energy, Government contracts, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: March 30, 2007.

Julie A Jacobson,

Deputy Assistant Secretary, Land and Minerals Management.

■ Accordingly, for the reasons stated in the preamble and under the authorities stated below, BLM amends 43 CFR parts 3000, 3200 and 3280 as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

■ 2. Amend the table in section 3000.12(a) by adding a new entry under ''Geothermal (Part 3200):'' after ''Lease reinstatement'' as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) * * *

FY 2006 PROCESSING FEE TABLE

Document/action	Fees
* * * * *	
Geothermal (Part 3200):	
* * * * *	
Nomination of lands ..	100 plus $0.10 per acre of lands nominated.

■ 3. Revise part 3200 to read as follows:

PART 3200—GEOTHERMAL RESOURCE LEASING

Subpart 3200—Geothermal Resource Leasing

Sec.
3200.1 Definitions.
3200.3 Changes in agency duties.
3200.4 What requirements must I comply with when taking any actions or conducting any operations under this part?
3200.5 What are my rights of appeal?
3200.6 What types of geothermal leases will BLM issue?
3200.7 What regulations apply to geothermal leases issued before August 8, 2005?
3200.8 What regulations apply to leases issued in response to applications pending on August 8, 2005?

Subpart 3201—Available Lands

3201.10 What lands are available for geothermal leasing?
3201.11 What lands are not available for geothermal leasing?

Subpart 3202—Lessee Qualifications

3202.10 Who may hold a geothermal lease?
3202.11 Must I prove I am qualified to hold a lease when filing an application to lease?
3202.12 Are other persons allowed to act on my behalf to file an application to lease?
3202.13 What happens if the applicant dies before the lease is issued?

Subpart 3203—Competitive Leasing

3203.5 What is the general process for obtaining a geothermal lease?
3203.10 How are lands included in a competitive sale?
3203.11 Under what circumstances may parcels be offered as a block for competitive sale?
3203.12 What fees must I pay to nominate lands?
3203.13 How often will BLM hold a competitive lease sale?
3203.14 How will BLM provide notice of a competitive lease sale?
3203.15 How does BLM conduct a competitive lease sale?
3203.17 How must I make payments if I am the successful bidder?
3203.18 What happens to parcels that receive no bids at a competitive lease sale?

Subpart 3204—Noncompetitive Leasing Other Than Direct Use Leases

3204.05 How can I obtain a noncompetitive lease?
3204.10 What payment must I submit with my noncompetitive lease application?
3204.11 How may I acquire a noncompetitive lease for lands that were not sold at a competitive lease sale?
3204.12 How may I acquire a noncompetitive lease for lands subject to a mining claim?
3204.13 How will BLM process noncompetitive lease applications pending on August 8, 2005?
3204.14 May I amend my application for a noncompetitive lease?
3204.15 May I withdraw my application for a noncompetitive lease?

Subpart 3205—Direct Use Leasing

3205.6 When may BLM issue a direct use lease to an applicant?
3205.7 How much acreage should I apply for in a direct use lease?
3205.10 How do I obtain a direct use lease?
3205.12 How will BLM respond to direct use lease applications on lands managed by another agency?
3205.13 May I withdraw my application for a direct use lease?
3205.14 May I amend my application for a direct use lease?
3205.15 How will I know whether my direct use lease will be issued?

Subpart 3206—Lease Issuance

3206.10 What must I do for BLM to issue a lease?
3206.11 What must BLM do before issuing a lease?
3206.12 What are the minimum and maximum lease sizes?
3206.13 What is the maximum acreage I may hold?
3206.14 How does BLM compute acreage holdings?
3206.15 How will BLM charge acreage holdings if the United States owns only a fractional interest in the geothermal resources in a lease?
3206.16 Is there any acreage which is not chargeable?
3206.17 What will BLM do if my holdings exceed the maximum acreage limits?
3206.18 When will BLM issue my lease?

Subpart 3207—Lease Terms and Extensions

3207.5 What terms (time periods) apply to my lease?
3207.10 What is the primary term of my lease?
3207.11 What work am I required to perform during the first 10 years of my lease for BLM to grant the initial extension of the primary term of my lease?
3207.12 What work am I required to perform each year for BLM to continue the initial and additional extensions of the primary term of my lease?

3207.13 Must I comply with the requirements of § § 3207.11 and 3207.12 when my lease overlies a mining claim?
3207.14 How do I qualify for a drilling extension?
3207.15 How do I qualify for a production extension?
3207.16 When may my lease be renewed?
3207.17 How is the term of my lease affected by commitment to a unit?
3207.18 Can my lease be extended if it is eliminated from a unit?

Subpart 3210—Additional Lease Information

3210.10 When does lease segregation occur?
3210.11 Does a lease segregated from an agreement or plan receive any benefits from unitization of the committed portion of the original lease?
3210.12 May I consolidate leases?
3210.13 Who may lease or locate other minerals on the same lands as my geothermal lease?
3210.14 May BLM readjust the terms and conditions in my lease?
3210.15 What if I appeal BLM's decision to readjust my lease terms?
3210.16 How must I prevent drainage of geothermal resources from my lease?
3210.17 What will BLM do if I do not protect my lease from drainage?

Subpart 3211—Filing and Processing Fees, Rent, Direct Use Fees, and Royalties

3211.10 What are the processing and filing fees for leases?
3211.11 What are the annual lease rental rates?
3211.12 How and where do I pay my rent?
3211.13 When is my annual rental payment due?
3211.14 Will I always pay rent on my lease?
3211.15 How do I credit rent towards royalty?
3211.16 Can I credit rent towards direct use fees?
3211.17 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used for commercial generation of electricity?
3211.18 What is the royalty rate on geothermal resource produced from or attributable to my lease that are used directly for purposes other than commercial generation of electricity?
3211.19 What is the royalty rate on byproducts derived from geothermal resources produced from or attributable to my lease?
3211.20 How do I credit advanced royalty towards royalty?
3211.21 When do I owe minimum royalty?

Subpart 3212—Lease Suspensions, Cessation of Production, Royalty Rate Reductions, and Energy Policy Act Royalty Rate Conversions

3212.10 What is the difference between a suspension of operations and production and a suspension of operations?
3212.11 How do I obtain a suspension of operations or a suspension of operations and production on my lease?
3212.12 How long does a suspension of operations or a suspension of operations and production last?
3212.13 How does a suspension affect my lease term and obligations?
3212.14 What happens when the suspension ends?
3212.15 Will my lease remain in full force and effect if I cease production and I do not have an approved suspension?
3212.16 Can I apply to BLM to reduce, suspend, or waive the royalty or rental of my lease?
3212.17 What information must I submit when I request that BLM suspend, reduce, or waive my royalty or rental?
3212.18 What are the production incentives for leases?
3212.19 How do I apply for a production incentive?
3212.20 How will BLM review my request for a production incentive?
3212.21 What criteria establish a qualified expansion project for the purpose of obtaining a production incentive?
3212.22 What criteria establish a new facility for the purpose of obtaining a production incentive?
3212.23 How will the production incentive apply to a qualified expansion project?
3212.24 How will the production incentive apply to a new facility?
3212.25 Can I convert the royalty rate terms of my lease in effect before August 8, 2005, to the terms of the Geothermal Steam Act, as amended by the Energy Policy Act of 2005?
3212.26 How do I submit a request to modify the royalty rate terms of my lease to the applicable terms prescribed in the Energy Policy Act of 2005?
3212.27 How will BLM or MMS review my request to modify the lease royalty rate terms?

Subpart 3213—Relinquishment, Termination, and Cancellation

3213.10 Who may relinquish a lease?
3213.11 What must I do to relinquish a lease?
3213.12 May BLM accept a partial relinquishment if it will reduce my lease to less than 640 acres?
3213.13 When does relinquishment take effect?
3213.14 Will BLM terminate my lease if I do not pay my rent on time?
3213.15 How will BLM notify me if it terminates my lease?
3213.16 May BLM cancel my lease?
3213.17 May BLM terminate my lease for reasons other than non-payment of rentals?
3213.18 When is a termination effective?
3213.19 What can I do if BLM notifies me that my lease is being terminated because of a violation of the law, regulations, or lease terms?

Subpart 3214—Personal and Surety Bonds

3214.10 Who must post a geothermal bond?
3214.11 Who must my bond cover?
3214.12 What activities must my bond cover?
3214.13 What is the minimum dollar amount required for a bond?
3214.14 May BLM increase the bond amount above the minimum?
3214.15 What kind of financial guarantee will BLM accept to back my bond?
3214.16 Is there a special bond form I must use?
3214.17 Where must I submit my bond?
3214.18 Who will BLM hold liable under the lease and what are they liable for?
3214.19 What are my bonding requirements when a lease interest is transferred to me?
3214.20 How do I modify my bond?
3214.21 What must I do if I want to use a certificate of deposit to back my bond?
3214.22 What must I do if I want to use a letter of credit to back my bond?

Subpart 3215—Bond Release, Termination, and Collection

3215.10 When may BLM collect against my bond?
3215.11 Must I replace my bond after BLM collects against it?
3215.12 What will BLM do if I do not restore the face amount or file a new bond?
3215.13 Will BLM terminate or release my bond?
3215.14 When BLM releases my bond, does that end my responsibilities?

Subpart 3216—Transfers

3216.10 What types of lease interests may I transfer?
3216.11 Where must I file a transfer request?
3216.12 When does a transferee take responsibility for lease obligations?
3216.13 What are my responsibilities after I transfer my interest?
3216.14 What filing fees and forms does a transfer require?
3216.15 When must I file my transfer request?
3216.16 Must I file separate transfer requests for each lease?
3216.17 Where must I file estate transfers, corporate mergers, and name changes?
3216.18 How do I describe the lands in my lease transfer?
3216.19 May I transfer record title interest for less than 640 acres?
3216.20 When does a transfer segregate a lease?
3216.21 When is my transfer effective?
3216.22 Does BLM approve all transfer requests?

Subpart 3217—Cooperative Agreements

3217.10 What are unit agreements?
3217.11 What are communitization agreements?
3217.12 What does BLM need to approve my communitization agreement?
3217.13 When does my communitization agreement go into effect?
3217.14 When will BLM approve my drilling or development contract?
3217.15 What does BLM need to approve my drilling or development contract?

Subpart 3250—Exploration Operations—General

3250.10 When do the exploration operations regulations apply?
3250.11 May I conduct exploration operations on my lease, someone else's lease, or unleased land?
3250.12 What general standards apply to exploration operations?

3250.13 What additional BLM orders or instructions govern exploration?
3250.14 What types of operations may I propose in my application to conduct exploration?

Subpart 3251—Exploration Operations: Getting BLM Approval

3251.10 Do I need a permit before I start exploration operations?
3251.11 What is in a complete Notice of Intent to Conduct Geothermal Resource Exploration Operations application?
3251.12 What action will BLM take on my Notice of Intent to Conduct Geothermal Resource Exploration Operations?
3251.13 Once I have an approved Notice of Intent, how can I change my exploration operations?
3251.14 Do I need a bond for conducting exploration operations?
3251.15 When will BLM release my bond?

Subpart 3252—Conducting Exploration Operations

3252.10 What operational standards apply to my exploration operations?
3252.11 What environmental requirements must I meet when conducting exploration operations?
3252.12 How deep may I drill a temperature gradient well?
3252.13 How long may I collect information from my temperature gradient well?
3252.14 How must I complete a temperature gradient well?
3252.15 When must I abandon a temperature gradient well?
3252.16 How must I abandon a temperature gradient well?

Subpart 3253—Reports: Exploration Operations

3253.10 Must I share with BLM the data I collect through exploration operations?
3253.11 Must I notify BLM when I have completed my exploration operations?

Subpart 3254—Inspection, Enforcement, and Noncompliance for Exploration Operations

3254.10 May BLM inspect my exploration operations?
3254.11 What will BLM do if my exploration operations are not in compliance with my permit, other BLM approvals or orders, or the regulations in this part?

Subpart 3255—Confidential, Proprietary Information

3255.10 Will BLM disclose information I submit under these regulations?
3255.11 When I submit confidential, proprietary information, how can I help ensure it is not available to the public?
3255.12 How long will information I give BLM remain confidential or proprietary?
3255.13 How will BLM treat Indian information submitted under the Indian Mineral Development Act?
3255.14 How will BLM administer information concerning other Indian minerals?
3255.15 When will BLM consult with Indian mineral owners when information concerning their minerals is the subject of a FOIA request?

Subpart 3256—Exploration Operations Relief and Appeals

3256.10 How do I request a variance from BLM requirements that apply to my exploration operations?
3256.11 How may I appeal a BLM decision regarding my exploration operations?

Subpart 3260—Geothermal Drilling Operations—General

3260.10 What types of geothermal drilling operations are covered by these regulations?
3260.11 What general standards apply to my drilling operations?
3260.12 What other orders or instructions may BLM issue?

Subpart 3261—Drilling Operations: Getting a Permit

3261.10 How do I get approval to begin well pad construction?
3261.11 How do I apply for approval for drilling operations and well pad construction?
3261.12 What is an operations plan?
3261.13 What is a drilling program and how do I apply for drilling program approval?
3261.14 When must I give BLM my operations plan?
3261.15 Must I give BLM my drilling permit application, drilling program, and operations plan at the same time?
3261.16 Can my operations plan, drilling permit, and drilling program apply to more than one well?
3261.17 How do I amend my operations plan or drilling permit?
3261.18 Do I need to file a bond before I build a well pad or drill a well?
3261.19 When will BLM release my bond?
3261.20 How will BLM review applications submitted under this subpart and notify me of its decision?
3261.21 How do I get approval to change an approved drilling operation?
3261.22 How do I get approval for subsequent well operations?

Subpart 3262—Conducting Drilling Operations

3262.10 What operational requirements must I meet when drilling a well?
3262.11 What environmental requirements must I meet when drilling a well?
3262.12 Must I post a sign at every well?
3262.13 May BLM require me to follow a well spacing program?
3262.14 May BLM require me to take samples or perform tests and surveys?

Subpart 3263—Well Abandonment

3263.10 May I abandon a well without BLM's approval?
3263.11 What information must I give to BLM to approve my Sundry Notice for abandoning a well?
3263.12 How will BLM review my Sundry Notice to abandon my well and notify me of their decision?
3263.13 What must I do to restore the site?
3263.14 May BLM require me to abandon a well?
3263.15 May I abandon a producible well?

Subpart 3264—Reports—Drilling Operations

3264.10 What must I submit to BLM after I complete a well?
3264.11 What must I submit to BLM after I finish subsequent well operations?
3264.12 What must I submit to BLM after I abandon a well?
3264.13 What drilling and operational records must I maintain for each well?
3264.14 How do I notify BLM of accidents occurring on my lease?

Subpart 3265—Inspection, Enforcement, and Noncompliance for Drilling Operations

3265.10 What part of my drilling operations may BLM inspect?
3265.11 What records must I keep available for inspection?
3265.12 What will BLM do if my operations do not comply with my permit and applicable regulations?

Subpart 3266—Confidential, Proprietary Information

3266.10 Will BLM disclose information I submit under these regulations?
3266.11 When I submit confidential, proprietary information, how can I help ensure it is not available to the public?
3266.12 How long will information I give BLM remain confidential or proprietary?

Subpart 3267—Geothermal Drilling Operations Relief and Appeals

3267.10 May I request a variance from any BLM requirements that apply to my drilling operations?
3267.11 How may I appeal a BLM decision regarding my drilling operations?

Subpart 3270—Utilization of Geothermal Resources—General

3270.10 What types of geothermal operations are governed by these utilization regulations?
3270.11 What general standards apply to my utilization operations?
3270.12 What other orders or instructions may BLM issue?

Subpart 3271—Utilization Operations: Getting a Permit

3271.10 What do I need to start preparing a site and building and testing a utilization facility on Federal land leased for geothermal resources?
3271.11 Who may apply for a permit to build a utilization facility?
3271.12 What do I need to start preliminary site investigations that may disturb the surface?
3271.13 How do I obtain approval to build pipelines and facilities connecting the well field to utilization facilities not located on Federal lands leased for geothermal resources?
3271.14 What do I need to start building and testing a utilization facility if it is not on Federal lands leased for geothermal resources?
3271.15 How do I get a permit to begin commercial operations?

Subpart 3272—Utilization Plan and Facility Construction Permit

3272.10 What must I submit to BLM in my utilization plan?
3272.11 How do I describe the proposed utilization facility?
3272.12 What environmental protection measures must I include in my utilization plan?
3272.13 How will BLM review my utilization plan and notify me of its decision?
3272.14 How do I get a permit to build or test my facility?

Subpart 3273—How To Apply for a Site License

3273.10 When do I need a site license for a utilization facility?
3273.11 When is a site license unnecessary?
3273.12 How will BLM review my site license application?
3273.13 What lands are not available for geothermal site licenses?
3273.14 What area does a site license cover?
3273.15 What must I include in my site license application?
3273.16 What is the annual rent for a site license?
3273.17 When may BLM reassess the annual rent for my site license?
3273.18 What facility operators must pay the annual site license rent?
3273.19 What are the bonding requirements for a site license?
3273.20 When will BLM release my bond?
3273.21 What are my obligations under the site license?
3273.22 How long will my site license remain in effect?
3273.23 May I renew my site license?
3273.24 When may BLM terminate my site license?
3273.25 When may I relinquish my site license?
3273.26 When may I assign or transfer my site license?

Subpart 3274—Applying for and Obtaining a Commercial Use Permit

3274.10 Do I need a commercial use permit to start commercial operations?
3274.11 What must I give BLM to approve my commercial use permit application?
3274.12 How will BLM review my commercial use permit application?
3274.13 May I get a permit even if I cannot currently demonstrate I can operate within required standards?

Subpart 3275—Conducting Utilization Operations

3275.10 How do I change my operations if I have an approved facility construction or commercial use permit?
3275.11 What are a facility operator's obligations?
3275.12 What environmental and safety requirements apply to facility operations?
3275.13 How must the facility operator measure the geothermal resources?
3275.14 What aspects of my geothermal operations must I measure?
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Authority: 30 U.S.C. 1001–1028; 43 U.S.C. 1701 *et seq.*; and Pub. L. 109–58.

Subpart 3200—Geothermal Resource Leasing

§ 3200.1 Definitions.

For purposes of this part and part 3280:

Acquired lands means lands or mineral estates that the United States obtained by deed through purchase, gift, condemnation or other legal process.

Act means the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*).

Additional extension means the period of years added to the primary term of a lease beyond the first 10 years and subsequent 5-year initial extension of a geothermal lease. The additional extension may not exceed 5 years.

Byproducts are minerals (exclusive of oil, hydrocarbon gas, and helium), found in solution or in association with geothermal steam, that no person would extract and produce by themselves because they are worth less than 75 percent of the value of the geothermal steam or because extraction and production would be too difficult.

Casual use means activities that ordinarily lead to no significant disturbance of Federal lands, resources, or improvements.

Commercial operation means delivering Federal geothermal resources, or electricity or other benefits derived from those resources, for sale. This term also includes delivering resources to the utilization point, if you are utilizing Federal geothermal resources for your own benefit and not selling energy to another entity.

Commercial production means production of geothermal resources when the economic benefits from the production are greater than the cost of production.

Commercial production or generation of electricity means generation of electricity that is sold or is subject to sale, including the electricity or energy that is reasonably required to produce the resource used in production of electricity for sale or to convert the resource into electrical energy for sale.

Commercial quantities means either:

(1) For production from a lease, a sufficient volume (in terms of flow and temperature) of the resource to provide a reasonable return after you meet all costs of production; or

(2) For production from a unit, a sufficient volume (in terms of flow and temperature) of the resource to provide a reasonable return after you meet all costs of drilling and production.

Commercial use permit means BLM authorization for commercially operating a utilization facility and/or utilizing Federal geothermal resources.

Development or drilling contract means a BLM-approved agreement between one or more lessees and one or more entities that makes resource exploration more efficient and protects the public interest.

Direct use means utilization of geothermal resources for commercial,

residential, agricultural, public facilities, or other energy needs other than the commercial production or generation of electricity. Direct use may occur under either a regular geothermal lease or a direct use lease.

Direct use lease means a lease issued noncompetitively in an area BLM designates as available exclusively for:

(1) Direct use of geothermal resources, without sale; and

(2) Purposes other than commercial generation of electricity.

Exploration operations means any activity relating to the search for evidence of geothermal resources, where you are physically present on the land and your activities may cause damage to those lands. Exploration operations include, but are not limited to, geophysical operations, drilling temperature gradient wells, drilling holes used for explosive charges for seismic exploration, core drilling or any other drilling method, provided the well is not used for geothermal resource production. It also includes related construction of roads and trails, and cross-country transit by vehicles over public land. Exploration operations do not include the direct testing of geothermal resources or the production or utilization of geothermal resources.

Facility construction permit means BLM permission to build and test a utilization facility.

Facility operator means the person receiving BLM authorization to site, construct, test, and/or operate a utilization facility. A facility operator may be a lessee, a unit operator, or a third party.

Geothermal drilling permit means BLM written permission to drill for and test Federal geothermal resources.

Geothermal exploration permit means BLM written permission to conduct only geothermal exploration operations and associated surface disturbance activities under an approved Notice of Intent to Conduct Geothermal Resource Exploration Operations, and includes any necessary conditions BLM imposes.

Geothermal resources operational order means a formal, numbered order, issued by BLM, that implements or enforces the regulations in this part.

Geothermal steam and associated geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproducts.

Gross proceeds means gross proceeds as defined by the Minerals Management Service at 30 CFR 206.351.

Initial extension means a period of years, no longer than 5 years, added to the primary term of a geothermal lease beyond the first 10 years of the lease, provided certain lease obligations are met.

Interest means ownership in a lease of all or a portion of the record title or operating rights.

Known geothermal resource area (KGRA) means an area where BLM determines that persons knowledgeable in geothermal development would spend money to develop geothermal resources.

Lessee means a person holding record title interest in a geothermal lease issued by BLM.

MMS means the Minerals Management Service of the Department of the Interior.

Notice to Lessees (NTL) means a written notice issued by BLM that implements the regulations in this part, part 3280, or geothermal resource operational orders, and provides more specific instructions on geothermal issues within a state, district, or field office. Notices to Lessees may be obtained by contacting the BLM State Office that issued the NTL.

Operating rights (working interest) means any interest held in a lease with the right to explore for, develop, and produce leased substances.

Operating rights owner means a person who holds operating rights in a lease. A lessee is an operating rights owner if the lessee did not transfer all of its operating rights. An operator may or may not own operating rights.

Operations plan, or plan of operations means a plan which fully describes the location of proposed drill pad, access roads and other facilities related to the drilling and testing of Federal geothermal resources, and includes measures for environmental and other resources protection and mitigation.

Operator means any person who has taken responsibility in writing for the operations conducted on leased lands.

Person means an individual, firm, corporation, association, partnership, trust, municipality, consortium, or joint venture.

Primary term means the first 10 years of a lease, not including any periods of suspension.

Produced or utilized in commercial quantities means the completion of a well that:

(1) Produces geothermal resources in commercial quantities; or

(2) Is capable of producing geothermal resources in commercial quantities so long as BLM determines that diligent efforts are being made toward the utilization of the geothermal resource.

Public lands means the same as defined in 43 U.S.C. 1702(e).

Record title means legal ownership of a geothermal lease established in BLM's records.

Relinquishment means the lessee's voluntary action to end the lease in whole or in part.

Secretary means the Secretary of the Interior or the Secretary's delegate.

Site license means BLM's written authorization to site a utilization facility on leased Federal lands.

Stipulation means additional conditions BLM attaches to a lease or permit.

Sublease means the lessee's conveyance of its interests in a lease to an operating rights owner. A sublessee is responsible for complying with all terms, conditions, and stipulations of the lease.

Subsequent well operations are those operations done to a well after it has been drilled. Examples of subsequent well operations include: cleaning the well out, surveying it, performing well tests, chemical stimulation, running a liner or another casing string, repairing existing casing, or converting the well from a producer to an injector or vice versa.

Sundry notice is your written request to perform work not covered by another type of permit, or to change operations in your previously approved permit.

Surface management agency means any Federal agency, other than BLM, that is responsible for managing the surface overlying Federally-owned minerals.

Temperature gradient well means a well authorized under a geothermal exploration permit drilled in order to obtain information on the change in temperature over the depth of the well.

Transfer means any conveyance of an interest in a lease by assignment, sublease, or otherwise.

Unit agreement means an agreement to explore for, produce and utilize separately-owned interests in geothermal resources as a single consolidated unit. A unit agreement defines how costs and benefits will be allocated among the holders of interest in the unit area.

Unit area means all tracts committed to an approved unit agreement.

Unit operator means the person who has stated in writing to BLM that the interest owners of the committed leases have designated it as operator of the unit area.

Unitized substances means geothermal resources recovered from lands committed to a unit agreement.

Utilization Plan or plan of utilization means a plan which fully describes the utilization facility, including measures for environmental protection and mitigation.

Waste means:

(1) Physical waste, including refuse; or

(2) Improper use or unnecessary dissipation of geothermal resources through inefficient drilling, production, transmission, or utilization.

§ 3200.3 Changes in agency duties.

There are many leases and agreements currently in effect, and that will remain in effect, involving Federal geothermal resources leases that specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements may also specifically refer to various officers such as Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager, and Deputy Minerals Manager. Those references must now be read to mean either the Bureau of Land Management or the Minerals Management Service, as appropriate. In addition, many leases and agreements specifically refer to 30 CFR part 270 or a specific section of that part. Effective December 3, 1982, references in such leases and agreements to 30 CFR part 270 should be read as references to this part 3200, which is the successor regulation to 30 CFR part 270.

§ 3200.4 What requirements must I comply with when taking any actions or conducting any operations under this part?

When you are taking any actions or conducting any operations under this part, you must comply with:

(a) The Act and the regulations of this part;

(b) Geothermal resource operational orders;

(c) Notices to lessees;

(d) Lease terms and stipulations;

(e) Approved plans and permits;

(f) Conditions of approval;

(g) Verbal orders from BLM that will be confirmed in writing;

(h) Other instructions from BLM; and

(i) Any other applicable laws and regulations.

§ 3200.5 What are my rights of appeal?

(a) If you are adversely affected by a BLM decision under this part, you may appeal that decision under parts 4 and 1840 of this title.

(b) All BLM decisions or approvals under this part are immediately effective and remain in effect while appeals are pending unless a stay is granted in accordance with § 4.21(b) of this title.

§ 3200.6 What types of geothermal leases will BLM issue?

BLM will issue two types of geothermal leases:

(a) Geothermal leases (competitively issued under subpart 3203 or noncompetitively issued under subpart 3204) which may be used for any type of geothermal use, such as commercial generation of electricity or direct use of the resource.

(b) Direct use leases (issued under subpart 3205).

§ 3200.7 What regulations apply to geothermal leases issued before August 8, 2005?

(a) *General applicability.* (1) Leases issued before August 8, 2005, are subject to this part and part 3280, except that such leases are subject to the BLM regulations in effect on August 8, 2005 (43 CFR parts 3200 and 3280 (2004)), with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals.

(2) The lessee of a lease issued before August 8, 2005, may elect to be subject to all of the regulations in this part and part 3280, without regard to the exceptions in paragraph (a)(1) of this section. Such an election must occur no later than December 1, 2008. Any such election as it pertains to lease terms relating to royalty rates must be made under the royalty rate conversion provisions of subpart 3212. A lessee must obtain a royalty conversion under subpart 3212 to make an election under this paragraph effective.

(b) *Royalty rate conversion and production incentives.* The lessee of a lease issued before August 8, 2005, may:

(1) Choose to convert lease terms relating to royalty rates under subpart 3212; or

(2) If it does not convert lease terms relating to royalty rates, apply for a production incentive under subpart 3212 (if eligible under that subpart).

(c) *Two year extension.* The lessee of a lease issued before August 8, 2005, may apply to extend a lease that was within 2 years of the end of its term on August 8, 2005, for up to 2 years to allow achievement of production under the lease or to allow the lease to be included in a producing unit.

§ 3200.8 What regulations apply to leases issued in response to applications pending on August 8, 2005?

(a) Any leases issued in response to applications that were pending on August 8, 2005, are subject to this part and part 3280, except that such leases are subject to the BLM regulations in effect on August 8, 2005 (43 CFR parts 3200 and 3280 (2004)), with regard to regulatory provisions relating to royalties, minimum royalties, rentals, primary term and lease extensions, diligence and annual work requirements, and renewals.

(b)(1) The lessee of a lease issued pursuant to an application that was pending on August 8, 2005, may elect to be subject to all of the regulations in this part and part 3280, without regard to the exceptions in paragraph (a) of this section.

(2) For leases issued on or after August 8, 2005, and before June 1, 2007, an election under paragraph (b)(1) of this section must occur no later than December 1, 2008.

(3) For leases issued on or after June 1, 2007, the lease applicant must make its election under paragraph (b)(1) of this section and notify BLM before the lease is issued.

Subpart 3201—Available Lands

§ 3201.10 What lands are available for geothermal leasing?

(a) BLM may issue leases on:

(1) Lands administered by the Department of the Interior, including public and acquired lands not withdrawn from such use;

(2) Lands administered by the Department of Agriculture with its concurrence;

(3) Lands conveyed by the United States where the geothermal resources were reserved to the United States; and

(4) Lands subject to Section 24 of the Federal Power Act, as amended (16 U.S.C. 818), with the concurrence of the Secretary of Energy.

(b) If your activities under your lease or permit might adversely affect a significant thermal feature of a National Park System unit, BLM will include stipulations to protect this thermal feature in your lease or permit. These stipulations will be added, if necessary, when your lease or permit is issued, extended, renewed or modified.

§ 3201.11 What lands are not available for geothermal leasing?

BLM will not issue leases for:

(a) Lands where the Secretary has determined that issuing the lease would cause unnecessary or undue degradation of public lands and resources;

(b) Lands contained within a unit of the National Park System, or otherwise administered by the National Park Service;

(c) Lands within a National Recreation Area;

(d) Lands where the Secretary determines after notice and comment

that geothermal operations, including exploration, development or utilization of lands, are reasonably likely to result in a significant adverse effect on a significant thermal feature within a unit of the National Park System;

(e) Fish hatcheries or wildlife management areas administered by the Secretary;

(f) Indian trust or restricted lands within or outside the boundaries of Indian reservations;

(g) The Island Park Geothermal Area; and

(h) Lands where Section 43 of the Mineral Leasing Act (30 U.S.C. 226–3) prohibits geothermal leasing, including:

(1) Wilderness areas or wilderness study areas administered by BLM or other surface management agencies;

(2) Lands designated by Congress as wilderness study areas, except where the statute designating the study area specifically allows leasing to continue; and

(3) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document 96–119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or are released to uses other than wilderness by an Act of Congress.

Subpart 3202—Lessee Qualifications

§ 3202.10 Who may hold a geothermal lease?

You may hold a geothermal lease if you are:

(a) A United States citizen who is at least 18 years old;

(b) An association of United States citizens, including a partnership;

(c) A corporation organized under the laws of the United States, any state or the District of Columbia; or

(d) A domestic governmental unit.

§ 3202.11 Must I prove I am qualified to hold a lease when filing an application to lease?

You do not need to submit proof that you are qualified to hold a lease under § 3202.10 at the time you submit an application to lease, but BLM may ask you in writing for information about your qualifications at any time. You must submit the additional information to BLM within 30 days after you receive the request.

§ 3202.12 Are other persons allowed to act on my behalf to file an application to lease?

Another person may act on your behalf to file an application to lease. The person acting for you must be qualified to hold a lease under § 3202.10, and must do the following:

(a) Sign the application;

(b) State his or her title;

(c) Identify you as the person he or she is acting for; and

(d) Provide written proof of his or her qualifications and authority to take such action, if BLM requests it.

§ 3202.13 What happens if the applicant dies before the lease is issued?

If the applicant dies before the lease is issued, BLM will issue the lease to either the administrator or executor of the estate or the heirs. If the heirs are minors, BLM will issue the lease to either a legal guardian or trustee, provided that the legal guardian or trustee is qualified to hold a lease under § 3202.10.

Subpart 3203—Competitive Leasing

§ 3203.5 What is the general process for obtaining a geothermal lease?

(a) The competitive geothermal leasing process consists of the following steps:

(1)(i) Entities interested in geothermal development nominate lands by submitting to BLM descriptions of lands they seek to be included in a lease sale; or

(ii) BLM may include land in a competitive lease sale on its own initiative.

(2) BLM provides notice of the parcels to be offered, and the time, location, and process for participating in the lease sale.

(3) BLM holds the lease sale and offers leases to the successful bidder.

(b) BLM will issue geothermal leases to the highest responsible qualified bidder after a competitive leasing process, except for situations where noncompetitive leasing is allowed under subparts 3204 and 3205, which include:

(1) Lease applications pending on August 8, 2005;

(2) Lands for which no bid was received in a competitive lease sale;

(3) Direct use lease applications for which no competitive interest exists; and

(4) Lands subject to mining claims.

§ 3203.10 How are lands included in a competitive sale?

(a) A qualified company or individual may nominate lands for competitive sale by submitting an applicable BLM nomination form.

(b) A nomination is a description of lands that you seek to be included in one lease. Each nomination may not exceed 5,120 acres, unless the area to be leased includes an irregular subdivision. Your nomination must provide a description of the lands nominated by legal land description.

(1) For lands surveyed under the public land rectangular survey system, describe the lands to the nearest aliquot part within the legal subdivision, section, township, and range;

(2) For unsurveyed lands, describe the lands by metes and bounds, giving courses and distances, and tie this information to an official corner of the public land surveys, or to a prominent topographic feature;

(3) For approved protracted surveys, include an entire section, township, and range. Do not divide protracted sections into aliquot parts;

(4) For unsurveyed lands in Louisiana and Alaska that have water boundaries, discuss the description with BLM before submission; and

(5) For fractional interest lands, identify the United States mineral ownership by percentage.

(c) You may submit more than one nomination, as long as each nomination separately satisfies the requirements of paragraph (b) of this section and includes the filing fee specified in § 3203.12.

(d) BLM may reconfigure lands to be included in each parcel offered for sale.

(e) BLM may include land in a lease sale on its own initiative.

§ 3203.11 Under what circumstances may parcels be offered as a block for competitive sale?

(a) As part of your nomination, you may request that lands be offered as a block at competitive sale by:

(1) Specifying that the lands requested will be associated with a project or unit: and

(2) Including information to support your request. BLM may require that you provide additional information.

(b) BLM may offer parcels as a block in response to a request under paragraph (a) of this section or on its own initiative. BLM will offer parcels as a block only if information is available to BLM indicating that a geothermal resource that could be produced as one unit can reasonably be expected to underlie such parcels.

§ 3203.12 What fees must I pay to nominate lands?

Submit with your nomination a filing fee for nominations of lands as found in the fee schedule in § 3000.12 of this chapter.

§ 3203.13 How often will BLM hold a competitive lease sale?

BLM will hold a competitive lease sale at least once every 2 years for lands available for leasing in a state that has nominations pending. A sale may include lands in more than one state. BLM may hold a competitive lease sale

in a state that has no nominations pending.

§ 3203.14 How will BLM provide notice of a competitive lease sale?

(a) The lands available for competitive lease sale under this subpart will be described in a Notice of Competitive Geothermal Lease Sale, which will include:

(1) The lease sale format and procedures;

(2) The time, date, and place of the lease sale; and

(3) Stipulations applicable to each parcel.

(b) At least 45 days before conducting a competitive lease sale, BLM will post the Notice in the BLM office having jurisdiction over the lands to be offered, and make it available for posting to surface managing agencies having jurisdiction over any of the included lands.

(c) BLM may take other measures of notification for the competitive sale such as:

(1) Issuing news releases;

(2) Notifying interested parties of the lease sale;

(3) Publishing notice in the newspaper; or

(4) Posting the list of parcels on the Internet.

§ 3203.15 How does BLM conduct a competitive lease sale?

(a) BLM will offer parcels for competitive bidding as specified in the sale notice.

(b) The winning bid will be the highest bid by a qualified bidder.

(c) You may not withdraw a bid. Your bid constitutes a legally binding commitment by you.

(d) BLM will reject all bids and re-offer a parcel if:

(1) BLM determines that the high bidder is not qualified; or

(2) The high bidder fails to make all payments required under § 3203.17.

§ 3203.17 How must I make payments if I am the successful bidder?

(a) You must make payments by personal check, cashier's check, certified check, bank draft, or money order payable to the ''Department of the Interior—Bureau of Land Management'' or by other means deemed acceptable by BLM.

(b) By the close of official business hours on the day of the sale or such other time as BLM may specify, you must submit for each parcel:

(1) Twenty percent of the bid;

(2) The total amount of the first year's rental; and

(3) The processing fee for competitive lease applications found in the fee schedule in § 3000.12 of this chapter.

(c) Within 15 calendar days after the last day of the sale, you must submit the balance of the bid to the BLM office conducting the sale.

(d) If you fail to make all payments required under this section, or fail to meet the qualifications in § 3202.10, BLM will revoke acceptance of your bid and keep all money that has been submitted.

§ 3203.18 What happens to parcels that receive no bids at a competitive lease sale?

Lands offered at a competitive lease sale that receive no bids will be available for leasing in accordance with subpart 3204.

Subpart 3204—Noncompetitive Leasing Other Than Direct Use Leases

§ 3204.5 How can I obtain a noncompetitive lease?

(a) Lands offered at a competitive lease sale that receive no bids will be available for noncompetitive leasing for a 2-year period beginning the first business day following the sale.

(b) You may obtain a noncompetitive lease for lands available exclusively for direct use of geothermal resources, under subpart 3205.

(c) The holder of a mining claim may obtain a noncompetitive lease for lands subject to the mining claim under § 3204.12.

(d) If your lease application was pending on August 8, 2005, you may obtain a noncompetitive lease under the leasing process in effect on that date, unless you notify BLM in writing that you elect for the lease application to be subject to the competitive leasing process specified in this subpart. If you elect for your lease application to be subject to the competitive leasing process in this subpart, your application will be considered a nomination for future competitive lease offerings for the lands in your application. An election made under this paragraph is not the same as an election made under § 3200.8.

§ 3204.10 What payment must I submit with my noncompetitive lease application?

Submit the processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter for each lease application, and an advance rent in the amount of $1 per acre (or fraction of an acre). BLM will refund the advance rent if we reject the lease application or if you withdraw the lease application before BLM accepts it. If the advance rental payment you send is less than 90 percent of the correct amount, BLM will reject the lease application.

§ 3204.11 How may I acquire a noncompetitive lease for lands that were not sold at a competitive lease sale?

(a) For a 2-year period following a competitive lease sale, you may file a noncompetitive lease application for lands on which no bids were received, on a form available from BLM. Submit 2 executed copies of the applicable form to BLM. At least one form must have an original signature. We will accept only exact copies of the form on one 2-sided page.

(1) For 30 days after the competitive geothermal lease sale, noncompetitive applications will be accepted only for parcels as configured in the Notice of Competitive Geothermal Lease Sale.

(2) Subsequent to the 30-day period specified in paragraph (a)(1) of this section, you may file a noncompetitive application for any available lands covered by the competitive lease sale.

(b)(1) All applications for a particular parcel under this section will be considered simultaneously filed if received in the proper BLM office any time during the first business day following the competitive lease sale. You may submit only one application per parcel. An application will not be available for public inspection the day it is filed. BLM will randomly select an application among those accepted on the first business day to receive a lease offer.

(2) Subsequent to the first business day following the competitive lease sale, the first qualified applicant to submit an application will be offered the lease. If BLM receives simultaneous applications as to date and time for overlapping lands, BLM will randomly select one to receive a lease offer.

§ 3204.12 How may I acquire a noncompetitive lease for lands subject to a mining claim?

If you hold a mining claim for which you have a current approved plan of operations, you may file a noncompetitive lease application for lands within the mining claim, on a form available from BLM. Submit two (2) executed copies of the applicable form to BLM, together with documentation of mining claim ownership and the current approved plan of operations for the mine. At least one form must have an original signature. We will accept only exact copies of the form on one 2-sided page.

§ 3204.13 How will BLM process noncompetitive lease applications pending on August 8, 2005?

Noncompetitive lease applications pending on August 8, 2005, will be processed under policies and procedures existing on that date unless

the applicant notifies BLM in writing that it elects for the lease application to be subject to the competitive leasing process specified in this subpart, in which case the application will be considered a nomination for future competitive lease offerings for the lands in the application.

§ 3204.14 May I amend my application for a noncompetitive lease?

You may amend your application for a noncompetitive lease at any time before we issue the lease, provided your amended application meets the requirements in this subpart and does not add lands not included in the original application. To add lands, you must file a new application.

§ 3204.15 May I withdraw my application for a noncompetitive lease?

During the 30-day period after the competitive lease sale, BLM will only accept a withdrawal of the entire application. Following that 30-day period, you may withdraw your noncompetitive lease application in whole or in part at any time before BLM issues the lease. If a partial withdrawal causes your lease application to contain less than the minimum acreage required under § 3206.12, BLM will reject the application.

Subpart 3205—Direct Use Leasing

§ 3205.6 When may BLM issue a direct use lease to an applicant?

(a) BLM may issue a direct use lease to an applicant if the following conditions are satisfied:

(1) The lands included in the lease application are open for geothermal leasing;

(2) BLM determines that the lands are appropriate for exclusive direct use operations, without sale, for purposes other than commercial generation of electricity;

(3) The acreage covered by the lease application is not greater than the quantity of acreage that is reasonably necessary for the proposed use;

(4) BLM has published a notice of the land proposed for a direct use lease for 90 days before issuing the lease;

(5) During the 90-day period beginning on the date of publication, BLM did not receive any nomination to include the lands in the next competitive lease sale following that period for which the lands would be eligible;

(6) BLM determines there is no competitive interest in the resource; and

(7) The applicant is the first qualified applicant.

(b) If BLM determines that the land for which an applicant has applied under this subpart is open for geothermal leasing and is appropriate only for exclusive direct use operations, but determines that there is competitive interest in the resource, it will include the land in a competitive lease sale with lease stipulations limiting operations to exclusive direct use.

§ 3205.7 How much acreage should I apply for in a direct use lease?

You should apply for only the amount of acreage that is necessary for your intended operation. A direct use lease may not cover more than the quantity of acreage that BLM determines is reasonably necessary for the proposed use. In no case may a direct use lease exceed 5,120 acres, unless the area to be leased includes an irregular subdivision.

§ 3205.10 How do I obtain a direct use lease?

(a) You may file an application for a direct use lease for any lands on which BLM manages the geothermal resources, on a form available from BLM. You may not sell the geothermal resource and you may not use it for the commercial generation of electricity.

(b) In your application, you must also provide information that will allow BLM to determine how much acreage is reasonably necessary for your proposed use, including:

(1) A description of all anticipated structures, facilities, wells, and pipelines including their size, location, function, and associated surface disturbance;

(2) A description of the utilization process;

(3) A description and analysis of anticipated reservoir production, injection, and characteristics to the extent required by BLM; and

(4) Any additional information or data that we may require.

(c) Submit with your application the nonrefundable processing fee for noncompetitive lease applications found in the fee schedule in § 3000.12 of this chapter for each direct use lease application.

§ 3205.12 How will BLM respond to direct use lease applications on lands managed by another agency?

BLM will respond to a direct use lease application on lands managed by another surface management agency by forwarding the application to that agency for its review. If that agency consents to lease issuance and recommends that the lands are appropriate for direct use operations, without sale, for purposes other than commercial generation of electricity, BLM will consider that consent and recommendation in determining whether to issue the lease. BLM may not issue a lease without the consent of the surface management agency.

§ 3205.13 May I withdraw my application for a direct use lease?

You may withdraw your application for a direct use lease any time before issuance of a lease.

§ 3205.14 May I amend my application for a direct use lease?

You may amend your application for a direct use lease at any time before we issue the lease, provided your amended application meets the requirements in this subpart and does not add lands. To add lands, you must file a new application.

§ 3205.15 How will I know whether my direct use lease will be issued?

(a) If BLM decides to issue you a direct use lease, it will do so in accordance with this subpart and subpart 3206.

(b) If BLM decides to deny your application for a direct use lease, it will advise you of its decision in writing.

Subpart 3206—Lease Issuance

§ 3206.10 What must I do for BLM to issue a lease?

Before BLM issues any lease, you must:

(a) Accept all lease stipulations;

(b) Make all required payments to BLM;

(c) Sign a unit joinder or waiver, if applicable; and

(d) Comply with the maximum limit on acreage holdings (see § § 3206.12 and 3206.16).

§ 3206.11 What must BLM do before issuing a lease?

For all leases, BLM must:

(a) Determine that the land is available; and

(b) Determine that your lease development will not have a significant adverse impact on any significant thermal feature within any of the following units of the National Park System:

(1) Mount Rainier National Park;

(2) Crater Lake National Park;

(3) Yellowstone National Park;

(4) John D. Rockefeller, Jr. Memorial Parkway;

(5) Bering Land Bridge National Preserve;

(6) Gates of the Arctic National Park and Preserve;

(7) Katmai National Park;

(8) Aniakchak National Monument and Preserve;

(9) Wrangell-St. Elias National Park and Preserve;

(10) Lake Clark National Park and Preserve;

(11) Hot Springs National Park;

(12) Big Bend National Park (including that portion of the Rio Grande National Wild Scenic River within the boundaries of Big Bend National Park);

(13) Lassen Volcanic National Park;

(14) Hawaii Volcanoes National Park;

(15) Haleakala National Park;

(16) Lake Mead National Recreation Area; and

(17) Any other significant thermal features within National Park System units that the Secretary may add to the list of these features, in accordance with 30 U.S.C. 1026(a)(3).

§ 3206.12 What are the minimum and maximum lease sizes?

Other than for direct use leases (the size for which is addressed in § 3205.7), the smallest lease we will issue is 640 acres, or all lands available for leasing in the section, whichever is less. The largest lease we will issue is 5,120 acres, unless the area to be leased includes an irregular subdivision. A lease must embrace a reasonably compact area.

§ 3206.13 What is the maximum acreage I may hold?

You may not directly or indirectly hold more than 51,200 acres in any one state.

§ 3206.14 How does BLM compute acreage holdings?

BLM computes acreage holdings as follows:

(a) If you own an undivided lease interest, your acreage holdings include the total lease acreage:

(b) If you own stock in a corporation or a beneficial interest in an association which holds a geothermal lease, your acreage holdings will include your proportionate part of the corporation's or association's share of the total lease acreage. This paragraph applies only if you own more than 10 percent of the corporate stock or a beneficial interest in the association; and

(c) If you own a lease interest, you will be charged with the proportionate share of the total lease acreage based on your share of the lease ownership. You will not be charged twice for the same acreage where you own both record title and operating rights for the lease. For example, if you own 50 percent record title interest in a 640 acre lease and 25 percent operating rights, you are charged with 320 acres.

§ 3206.15 How will BLM charge acreage holdings if the United States owns only a fractional interest in the geothermal resources in a lease?

Where the United States owns only a fractional interest in the geothermal resources of the lands in a lease, BLM will only charge you with the part owned by the United States as acreage holdings. For example, if you own 100 percent of record title in a 100 acre lease, and the United States owns 50 percent of the mineral estate, you are charged with 50 acres.

§ 3206.16 Is there any acreage which is not chargeable?

BLM does not count leased acreage included in any approved unit agreement, drilling contract, or development contract as part of your total state acreage holdings.

§ 3206.17 What will BLM do if my holdings exceed the maximum acreage limits?

BLM will notify you in writing if your acreage holdings exceed the limit in § 3206.13. You have 90 days from the date you receive the notice to reduce your holdings to within the limit. If you do not comply, BLM will cancel your leases, beginning with the lease most recently issued, until your holdings are within the limit.

§ 3206.18 When will BLM issue my lease?

BLM issues your lease the day we sign it. Your lease goes into effect the first day of the next month after the issuance date.

Subpart 3207—Lease Terms and Extensions

§ 3207.5 What terms (time periods) apply to my lease?

Your lease may include a number of different time periods. Not every time period applies to every lease. These periods include:

(a) A primary term consisting of:

(1) Ten years;

(2) An initial extension of the primary term for up to 5 years;

(3) An additional extension of the primary term for up to 5 years;

(b) A drilling extension of 5 years under § 3207.14;

(c) A production extension of up to 35 years; and

(d) A renewal period of up to 55 years.

§ 3207.10 What is the primary term of my lease?

(a) Leases have a primary term of 10 years.

(b) BLM will extend the primary term for 5 years if:

(1) By the end of the 10th year of the primary term in paragraph (a), you have satisfied the requirements in § 3207.11; and

(2) At the end of each year after the 10th year of the lease, you have satisfied the requirements in § 3207.12(a) or (d) for that year.

(c) BLM will extend the primary term for 5 additional years if:

(1) You satisfied the requirements of § 3207.12(b) or (d); and

(2) At the end of each year of the second 5-year extension you satisfy the requirements in § 3207.12(c) or (d) for that year.

(d) If you do not satisfy the annual requirements during the initial or additional extension of your primary term, your lease terminates or expires.

§ 3207.11 What work am I required to perform during the first 10 years of my lease for BLM to grant the initial extension of the primary term of my lease?

(a) By the end of the 10th year, you must expend a minimum of $40 per acre in development activities that provide additional geologic or reservoir information, such as:

(1) Geologic investigation and analysis;

(2) Drilling temperature gradient wells;

(3) Core drilling;

(4) Geochemical or geophysical surveys;

(5) Drilling production or injection wells;

(6) Reservoir testing; or

(7) Other activities approved by BLM.

(b) In lieu of the work requirement in paragraph (a) of this section, you may:

(1) Make a payment to BLM equivalent to the required work expenditure such that the total of the payment and the value of the work you perform equals $40 per acre (or fraction thereof) of land included in your lease; or

(2) Submit documentation to BLM that you have produced or utilized geothermal resources in commercial quantities.

(c) Prior to the end of the 10th year of the primary term, you must submit detailed information to BLM demonstrating that you have complied with paragraph (a) or (b) of this section. Describe the activities by type, location, date(s) conducted, and the dollar amount spent on those operations. Include all geologic information obtained from your activities in your report. Submit additional information that BLM requires to determine compliance within the timeframe that we specify. We must approve the type of work done and the expenditures claimed in your report before we can credit them toward your requirements.

(d) If you do not perform development activities, make payments, or document production or utilization as required by this section, your lease will expire at the end of the 10-year primary term.

(e) If you complied with paragraph (c) of this section, but BLM has not determined by the end of the 10th year whether you have complied with the requirements of paragraph (a) or (b) of this section, upon request we will suspend your lease effective immediately before its expiration in order to determine your compliance. If we determine that you have complied, we will lift the suspension and grant the first 5-year extension of the primary term effective on the first day of the month following our determination of compliance. If we determine that you have not complied, we will terminate the suspension and your lease will expire upon the date of the termination of the suspension.

(f) Every 3 calendar years the dollar amount of the work requirements and the amount to be paid in lieu of such work required by this section will automatically be updated. The update will be based on the change in the Implicit Price Deflator-Gross Domestic Product for those 3 years.

§ 3207.12 What work am I required to perform each year for BLM to continue the initial and additional extensions of the primary term of my lease?

(a) To continue the initial extension of the primary term of your lease, in each of lease years 11, 12, 13, and 14, you must expend a minimum of $15 per acre (or fraction thereof) per year in development activities that establish a geothermal potential or confirm the existence of producible geothermal resources. Such activities include, but are not limited to:

(1) Geologic investigation and analysis;

(2) Drilling temperature gradient wells;

(3) Core drilling;

(4) Geochemical or geophysical surveys;

(5) Drilling production or injection wells;

(6) Reservoir testing; or

(7) Other activities approved by BLM.

(b) For BLM to grant the additional extension of the primary term of your lease, in year 15 you must expend a minimum of $15 per acre (or fraction thereof) in development activities that provide additional geologic or reservoir information, such as those described in paragraph (a) of this section.

(c) To continue the additional extension of the primary term of your lease, in each of lease years 16, 17, 18, and 19, you must expend a minimum of $25 per acre (or fraction thereof) per year in development activities that provide additional geologic or reservoir information, such as those described in paragraph (a) of this section.

(d) In lieu of the work requirements in paragraphs (a), (b), and (c) of this section, you may:

(1) Submit documentation to BLM that you have produced or utilized geothermal resources in commercial quantities; or

(2) Make a payment to BLM equivalent to the required annual work expenditure such that the total of the payment and the value of the work you perform equals $15 or $25 per acre per year of land included in your lease, as applicable. BLM may limit the number of years that it will accept such payments if it determines that further payments in lieu of the work requirements would impair achievement of diligent development of the geothermal resources.

(e) Under paragraph (a) or paragraph (b) of this section, if you expend an amount greater than the amount specified, you may apply any payment in excess of the specified amount to any subsequent year within the applicable 5-year extension of the primary term. An excess payment during the first 5-year extension period may not be applied to any year within the second 5-year extension period.

(f) You must submit information to BLM showing that you have complied with the applicable requirements in this section no later than:

(1) 60 days after the end of years 11, 12, 13, and 14;

(2) 60 days before the end of year 15; and

(3) 60 days after the end of years 16, 17, 18, and 19.

(g) In your submission, describe your activities by type, location, date(s) conducted, and the dollar amount spent on those operations. Include all geologic information obtained from your activities in your report. We must approve the type of work done and the expenditures claimed in your report before we can credit them toward your requirements. We will notify you if you have not met the requirements.

(h) If you do not comply with the requirements of this section in any year of a 5-year extension of the primary term, BLM will terminate your lease at the end of that year unless you qualify for a drilling extension under § 3207.13.

(i) Every three calendar years the dollar amount of the work requirements and the amount to be paid in lieu of such work required by this section will automatically be updated. The update will be based on the change in the Implicit Price Deflator-Gross Domestic Product for those three years.

§ 3207.13 Must I comply with the requirements of §§ 3207.11 and 3207.12 when my lease overlies a mining claim?

(a) BLM will exempt you from complying with the requirements of §§ 3207.11 and 3207.12 when you demonstrate to BLM that:

(1) The mining claim has a plan of operations approved by the appropriate Federal land management agency; and

(2) Your development of the geothermal resource on the lease would interfere with the mining operations.

(b) The exemption provided under paragraph (a) of this section expires upon termination of the mining operations.

§ 3207.14 How do I qualify for a drilling extension?

(a) BLM will extend your lease for 5 years under a drilling extension if at the end of the 10th year or any subsequent year of the initial or additional extension of the primary term you:

(1) Have not met the requirements that you must satisfy for BLM to grant or to continue the initial or additional extensions of your primary lease term under § 3207.12, or your lease is in its 20th year;

(2) Commenced drilling a well before the end of such year for the purposes of testing or producing a geothermal reservoir; and

(3) Are diligently drilling to a target that BLM determines is adequate, based on the local geology and type of development you propose.

(b) The drilling extension is effective on the first day following the expiration or termination of the primary term.

(c) At the end of your drilling extension, your lease will expire unless you qualify for a production extension under § 3207.15.

§ 3207.15 How do I qualify for a production extension?

(a) BLM will grant a production extension of up to 35 years, if you are producing or utilizing geothermal resources in commercial quantities.

(b) Before granting a production extension, BLM must determine that you:

(1) Have a well that is actually producing geothermal resources in commercial quantities; or

(2)(i) Have completed a well that is capable of producing geothermal resources in commercial quantities; and

(ii) Are making diligent efforts toward utilization of the resource.

(c) To qualify for a production extension under paragraph (b)(2) of this

section, unless BLM specifies otherwise you must demonstrate on an annual basis that you are making diligent efforts toward utilization of the resource.

(d) BLM will make the determinations required under paragraphs (b)(1) and (b)(2)(i) of this section based on the information you provide under subparts 3264 and 3276 and any other information that BLM may require you to submit.

(e) For BLM to make the determination required under paragraph (b)(2)(ii) of this section, you must provide BLM with information, such as:

(1) Actions you have taken to identify and define the geothermal resource on your lease;

(2) Actions you have taken to negotiate marketing arrangements, sales contracts, drilling agreements, or financing for electrical generation and transmission projects;

(3) Current economic factors and conditions that would affect the decision of a prudent operator to produce or utilize geothermal resources in commercial quantities on your lease; and

(4) Other actions you have taken, such as obtaining permits, conducting environmental studies, and meeting permit requirements.

(f) Your production extension will begin on the first day of the month following the end of the primary term (including the initial and additional extensions) or the drilling extension.

(g) Your production extension will continue for up to 35 years as long as the geothermal resource is being produced or utilized in commercial quantities. If you fail to produce or utilize geothermal resources in commercial quantities, BLM will terminate your lease unless you meet the conditions set forth in § 3212.15 or § 3213.19.

§ 3207.16 When may my lease be renewed?

You have a preferential right to renew your lease for a second term of up to 55 years, under such terms and conditions as BLM deems appropriate, if at the end of the production extension you are producing or utilizing geothermal resources in commercial quantities and the lands are not needed for any other purpose. The renewal term will continue for up to 55 years if you produce or utilize geothermal resources in commercial quantities and satisfy other terms and conditions BLM imposes.

§ 3207.17 How is the term of my lease affected by commitment to a unit?

(a) If your lease is committed to a unit agreement and its term would expire before the unit term would, BLM may extend your lease to match the term of the unit. We will do this if unit development has been diligently pursued while your lease is committed to the unit.

(b) To extend the term of a lease committed to a unit, the unit operator must send BLM a request for lease extension at least 60 days before the lease expires showing that unit development has been diligently pursued. BLM may require additional information.

(c) Within 30 days after receiving your complete extension request, BLM will notify the unit operator whether we approve.

§ 3207.18 Can my lease be extended if it is eliminated from a unit?

If your lease is eliminated from a unit under § 3283.6, it is eligible for an extension if it meets the requirements for such extension.

Subpart 3210—Additional Lease Information

§ 3210.10 When does lease segregation occur?

(a) Lease segregation occurs when:

(1) A portion of a lease is committed to a unit agreement while other portions are not committed; or

(2) Only a portion of a lease remains in a participating area when the unit contracts. The portions of the lease outside the participating area are eliminated from the unit agreement and segregated as of the effective date of the unit contraction.

(b) BLM will assign the original lease serial number to the portion within the agreement. BLM will give the lease portion outside the agreement a new serial number, and the same lease terms as the original lease.

§ 3210.11 Does a lease segregated from an agreement or plan receive any benefits from unitization of the committed portion of the original lease?

The new segregated lease stands alone and does not receive any of the benefits provided to the portion committed to the unit. We will not give you an extension for the eliminated portion of the lease based on status of the lands committed to the unit, including production in commercial quantities or the existence of a producible well.

§ 3210.12 May I consolidate leases?

BLM may approve your consolidation of two or more adjacent leases that have the same ownership and same lease terms, including expiration dates, if the combined leases do not exceed the size limitations in § 3206.12. We may consolidate leases that have different stipulations if all other lease terms are the same. You must include the processing fee for lease consolidations found in the fee schedule in § 3000.12 of this chapter with your request to consolidate leases.

§ 3210.13 Who may lease or locate other minerals on the same lands as my geothermal lease?

Anyone may lease or locate other minerals on the same lands as your geothermal lease. The United States reserves the ownership of and the right to extract helium, oil, and hydrocarbon gas from all geothermal steam and associated geothermal resources. In addition, BLM allows mineral leasing or location on the same lands that are leased for geothermal resources, provided that operations under the mineral leasing or mining laws do not unreasonably interfere with or endanger your geothermal operations.

§ 3210.14 May BLM readjust the terms and conditions in my lease?

(a)(1) Except for rentals and royalties (readjustments of which are addressed in paragraph (b) of this section, BLM may readjust the terms and conditions of your lease 10 years after you begin production of geothermal resources from your lease, and at not less than 10-year intervals thereafter, under the procedures of paragraphs (c), (d), and (e) of this section.

(2) If another Federal agency manages the lands' surface, we will ask that agency to review the related terms and conditions and propose any readjustments. Once BLM and the surface managing agency reach agreement and the surface managing agency approves the proposed readjustment, we will follow the procedures in paragraphs (c), (d), and (e) of this section.

(b) BLM may readjust your lease rentals and royalties at not less than 20-year intervals beginning 35 years after we determine that your lease is producing geothermal resources in commercial quantities. BLM will not increase your rentals or royalties by more than 50 percent over the rental or royalties you paid before the readjustment.

(c) BLM will give you a written proposal to readjust the rentals, royalties, or other terms and conditions of your lease. You will have 30 days after you receive the proposal to file with BLM an objection in writing to the proposed new terms and conditions.

(d) If you do not object in writing or relinquish your lease, you will conclusively be deemed to have agreed

to the proposed new terms and conditions. BLM will issue a written decision setting the date that the new terms and conditions become effective as part of your lease. This decision will be in full force and effect under its own terms, and you are not authorized to appeal the BLM decision to the Office of Hearings and Appeals.

(e)(1) If you file a timely objection in writing, BLM may issue a written decision making the readjusted terms and conditions effective no sooner than 90 days after we receive your objections, unless we reach an agreement with you as to the readjusted terms and conditions of your lease that makes them effective sooner.

(2) If BLM does not reach an agreement with you by 60 days after we receive your objections, then either the lessee or BLM may terminate your lease, upon giving the other party 30 days' notice in writing. A termination under this paragraph does not affect your obligations that accrued under the lease when it was in effect, including those specified in § 3200.4.

§ 3210.15 What if I appeal BLM's decision to readjust my lease terms?

If you appeal BLM's decision under § 3210.14(e)(1) to readjust the rentals, royalties, or other terms and conditions of your lease, the decision is effective during the appeal. If you win your appeal and we must change our decision, you will receive a refund or credit for any overpaid rents or royalties.

§ 3210.16 How must I prevent drainage of geothermal resources from my lease?

You must prevent the drainage of geothermal resources from your lease by diligently drilling and producing wells that protect the Federal geothermal resource from loss caused by production from other properties.

§ 3210.17 What will BLM do if I do not protect my lease from drainage?

BLM will determine the amount of geothermal resources drained from your lease. MMS will bill you for a compensatory royalty based on our findings. This royalty will equal the amount you would have paid for producing those resources. All interest owners in a lease are jointly and severally liable for drainage protection and any compensatory royalties.

Subpart 3211—Filing and Processing Fees, Rent, Direct Use Fees, and Royalties

§ 3211.10 What are the processing and filing fees for leases?

(a) Processing or filing fees are required for the following actions:

(1) Nomination of lands for competitive leasing;

(2) Competitive lease application;

(3) Noncompetitive lease application (including application for direct use leases);

(4) Assignment and transfer of record title or operating right;

(5) Name change, corporate merger, or transfer to heir/devisee;

(6) Lease consolidation; and

(7) Lease reinstatement.

(b) The amounts of these fees can be found in § 3000.12 of this chapter.

§ 3211.11 What are the annual lease rental rates?

(a) BLM calculates annual rent based on the amount of acreage covered by your lease. To determine lease acreage for this section, round up any partial acreage up to the next whole acre. For example, the annual rent on a 2,456.39 acre lease is calculated based on 2,457 acres.

(b) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which no election is made under § 3200.8(b)(1)), and for leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2), the rental rate is as follows:

(1) If you obtained your lease through a competitive lease sale, then your annual rent is $2 per acre for the first year, and $3 per acre for the second through tenth year;

(2) If you obtained your lease noncompetitively, then your annual rent is $1 per acre for the first 10 years; and

(3) After the tenth year, your annual rent will be $5 per acre, regardless of whether you obtained your lease through a competitive lease sale or noncompetitively.

(c) For leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1), the rental rate is the rate prescribed in the regulations in effect on August 8, 2005 (43 CFR 3211.10 (2004)).

(d) For leases in which the United States owns only a fractional interest in the geothermal resources, BLM will prorate the rents established in paragraphs (a), (b), and (c) of this section, based on the fractional interest owned by the United States. For example, if the United States owns 50 percent of the geothermal resources in a 640 acre lease, you pay rent based on 320 acres.

§ 3211.12 How and where do I pay my rent?

(a) *First year.* Pay BLM the first year's rent in advance. You may use a personal check, cashier's check, or money order made payable to the Department of the Interior—Bureau of Land Management. You may also make payments by credit card or electronic funds transfer with our prior approval.

(b) *Subsequent years.* For all subsequent years, make your rental payments to MMS. See MMS regulations at 30 CFR part 218.

§ 3211.13 When is my annual rental payment due?

Your rent is always due in advance. MMS must receive your annual rental payment by the anniversary date of the lease each year. See the MMS regulations at 30 CFR part 218, which explain when MMS considers a payment as received. If less than a full year remains on a lease, you must still pay a full year's rent by the anniversary date of the lease. For example, the rent on a 2,000-acre lease for the 11th year, would be $10,000 ($5 per acre), due prior to the 10th anniversary of the lease.

§ 3211.14 Will I always pay rent on my lease?

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which no election is made under § 3200.8(b)(1)), and for leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2), you must always pay rental, whether you are in a unit or outside of a unit, whether your lease is in production or not, and whether royalties or direct use fees apply to your production.

(b) For leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1), you must pay rent for all the lands in your lease until:

(1) Your lease achieves production in commercial quantities, at which time you pay royalties; or

(2) Lands in your lease are within the participating area of a unit agreement or cooperative plan, at which time you pay rent for lands outside the participating

area and pay royalties for lands within the participating area.

§ 3211.15 How do I credit rent towards royalty?

You may credit rental towards royalty under MMS regulations at 30 CFR 218.303.

§ 3211.16 Can I credit rent towards direct use fees?

No. You may not credit rental towards direct use fees. See MMS regulations at 30 CFR 218.304.

§ 3211.17 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used for commercial generation of electricity?

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee does not make an election under § 3200.8(b)(1)), the royalty rate is the rate prescribed in this paragraph.

(1) If you or your affiliate sell(s) electricity generated by use of geothermal resources produced from or attributed to your lease, then:

(i) For the first 10 years of production, the royalty rate is 1.75 percent;

(ii) After the first 10 years of production, the royalty rate is 3.5 percent; and

(iii) You must apply the rate established under this paragraph to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206, subpart H.

(2) If you or your affiliate sell(s) geothermal resources produced from or attributed to your lease at arm's length to a purchaser who uses those resources to generate electricity, then the royalty rate is 10 percent. You must apply that rate to the gross proceeds derived from the arm's-length sale of the geothermal resources under applicable MMS rules at 30 CFR part 206, subpart H.

(b) For leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, BLM will establish royalty rates under paragraphs (b)(1) and (b)(2) of this section.

(1) For leases that, prior to submitting a request to modify the royalty rate terms of the lease under section 3212.26, produced geothermal resources for the commercial generation of electricity, or to which geothermal resource production for the commercial generation of electricity was attributed:

(i) If you or your affiliate uses geothermal resources produced from or attributed to your lease to generate and sell electricity, BLM will establish a rate on a case-by-case basis that it expects will yield total royalty payments over the life of the lease equivalent to those that would have been paid under the royalty rate in effect for the lease before August 5, 2005. The rate is not limited to the range of rates specified in 30 U.S.C. 1004(a)(1). You must apply the rate that BLM establishes to the gross proceeds derived from the sale of electricity under applicable MMS rules at 30 CFR part 206, subpart H.

(ii) If you or your affiliate sells geothermal resources produced from or attributed to your lease at arm's length to a purchaser who uses those resources to generate electricity, the royalty rate is the rate specified in the lease instrument. You must apply that rate to the gross proceeds derived from the arm's-length sale of the geothermal resources under applicable MMS rules at 30 CFR part 206, subpart H.

(2) For leases that, prior to submitting a request to modify the royalty rate terms of the lease under section 3212.26, did not produce geothermal resources for the commercial generation of electricity, and to which geothermal resource production for the commercial generation of electricity was not attributed, BLM will establish royalty rates equal to those set forth in paragraph (a)(1) or (a)(2) of this section, whichever is applicable.

(c) For leases issued before August 8, 2005, whose royalty terms are not modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, and for leases issued in response to applications pending on that date for which the lessee does not make an election under § 3200.8(b)(1), the royalty rate is the rate prescribed in the lease instrument.

§ 3211.18 What is the royalty rate on geothermal resources produced from or attributable to my lease that are used directly for purposes other than commercial generation of electricity?

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which the lessee does not make an election under § 3200.8(b)), and for leases issued before August 8, 2005, whose royalty terms are modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25:

(1) If you or your affiliate use(s) the geothermal resources directly and do(es) not sell those resources at arm's length, no royalty rate applies. Instead, you must pay direct use fees according to a schedule published by MMS under MMS regulations at 30 CFR 206.356.

(2) If you or your affiliate sell(s) the geothermal resources at arm's length to a purchaser who uses the resources for purposes other than commercial generation of electricity, your royalty rate is 10 percent. You must apply that royalty rate to the gross proceeds derived from the arm's-length sale under applicable MMS regulations at 30 CFR part 206, subpart H.

(3) If you are a lessee and you are a state, tribal, or local government, no royalty rate applies. Instead you must pay a nominal fee established under MMS rules at 30 CFR 206.366.

(b) For leases issued before August 8, 2005, whose royalty terms are not modified to the terms prescribed in the Energy Policy Act of 2005 under § 3212.25, and for leases issued in response to applications pending on that date for which the lessee does not make an election under § 3200.8(b), the royalty rate is the rate prescribed in the lease instrument.

(c) For purposes of this section, direct use of geothermal resources includes generation of electricity that is not sold commercially and that is used solely for the operation of a facility unrelated to commercial electrical generation.

§ 3211.19 What is the royalty rate on byproducts derived from geothermal resources produced from or attributable to my lease?

(a) For leases issued on or after August 8, 2005 (other than leases issued in response to applications that were pending on that date for which no election is made under § 3200.8(b)(1)), and for leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2):

(1) The royalty rate for byproducts derived from geothermal resource production that are identified in Section 1 of the Mineral Leasing Act (MLA), as amended (30 U.S.C. 181), is the royalty rate that is prescribed in the MLA or in the regulations implementing the MLA for production of that mineral under a lease issued under the MLA; and

(2) For a byproduct that is not identified in 30 U.S.C. 181, no royalty is due.

(b) For leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1), the royalty on all byproducts is the rate prescribed in the lease instrument, or if none is prescribed in the lease instrument, the rate prescribed in 43 CFR 3211.10(b) (2004).

§ 3211.20 How do I credit advanced royalty towards royalty?

You may credit advanced royalty toward royalty under MMS regulations at 30 CFR 218.305(c).

§ 3211.21 When do I owe minimum royalty?

(a) You do not owe minimum royalties for:

(1) Leases issued on or after August 8, 2005 (other than for leases issued in response to applications that were pending on that date for which no election is made under § 3200.8(b)(1)); and

(2) Leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2).

(b) For leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1), you owe minimum royalty of $2.00 per acre (to be paid to MMS) when:

(1) You have not begun actual production following the BLM's determination that you have a well capable of commercial production; or

(2) The value of actual production is so low that royalty you would pay under the scheduled rate is less than $2.00 per acre (this applies to situations of no production, as long as the lease remains in effect).

Subpart 3212—Lease Suspensions, Cessation of Production, Royalty Rate Reductions, and Energy Policy Act Royalty Conversions

§ 3212.10 What is the difference between a suspension of operations and production and a suspension of operations?

(a) A suspension of operations and production is a temporary relief from production obligations which you may request from BLM. Under this paragraph you must cease all operations on your lease.

(b) A suspension of operations is when BLM orders you, to stop production temporarily in the interest of conservation.

§ 3212.11 How do I obtain a suspension of operations or a suspension of operations and production on my lease?

(a) If you are the operator, you may request in writing that BLM suspend your operations and production for a producing lease. Your request must fully describe why you need the suspension. BLM will determine if your suspension is justified and, if so, will approve it.

(b) BLM may suspend your operations on any lease in the interest of conservation.

(c) A suspension under this section may include leases committed to an approved unit agreement. If leases committed to a unit are suspended, the unit operator must continue to satisfy unit terms and obligations, unless BLM also suspends unit terms and obligations, in whole or in part, under subpart 3287.

§ 3212.12 How long does a suspension of operations or a suspension of operations and production last?

(a) BLM will state in your suspension notice how long your suspension of operations or operations and production is effective.

(b) During a suspension, you may ask BLM in writing to terminate your suspension. You may not unilaterally terminate a suspension that BLM ordered. A suspension of operations and production that we approved upon your request will automatically terminate when you begin or resume authorized production or drilling operations.

(c) If we receive information showing that you must resume operations to protect the interests of the United States, we will terminate your suspension and order you to resume production.

(d) If a suspension terminates, you must resume paying rents and royalty (see § 3212.14).

§ 3212.13 How does a suspension affect my lease term and obligations?

(a) If BLM approves a suspension of operations and production:

(1) Your lease term is extended by the length of time the suspension is in effect; and

(2) You are not required to drill, produce geothermal resources, or pay rents or royalties during the suspension. We will suspend your obligation to pay lease rents or royalties beginning the first day of the month following the date the suspension is effective.

(b) If BLM orders you to suspend your operations;

(1) Your lease term is extended by the length of time the suspension is in effect; and

(2) Your lease rental or royalty obligations are not suspended, except that BLM may suspend your rental or royalty obligations if you will be denied all beneficial use of your lease during the period of the suspension.

§ 3212.14 What happens when the suspension ends?

When the suspension ends, you must resume rental and royalty payments that were suspended, beginning on the first day of the lease month after BLM terminates the suspension. You must pay the full rental amount due on or before the next lease anniversary date. If you do not make the rental payments on time, BLM will refund your balance and terminate the lease.

§ 3212.15 Will my lease remain in effect if I cease production and I do not have an approved suspension?

In the absence of a suspension issued under § 3212.11, if you cease production for more than one calendar month on a lease that is subject to royalties and that has achieved commercial production (through actual or allocated production), your lease will remain in effect only if the circumstances described in paragraphs (a), (b), or (c) of this section apply:

(a)(1) For leases issued on or after August 8, 2005 (other than leases issued in response to applications pending on that date for which no election is made under § 3200.8(b)(1)), and for leases issued before August 8, 2005, for which an election is made under § 3200.7(a)(2), your lease will remain in effect if, during the period in which there is no production, you continue to pay a monthly advanced royalty under MMS regulations at 30 CFR 218.305. This option is available only for an aggregate of 10 years (120 months, whether consecutive or not).

(2) For leases issued before August 8, 2005, for which no election is made under § 3200.7(a)(2), and for leases issued in response to applications pending on August 8, 2005, for which no election is made under § 3200.8(b)(1), your lease will remain in effect if, during the period in which there is no production you:

(i) Continue to make minimum royalty payments as specified in § 3211.21(b) of this part;

(ii) Maintain a well capable of production in commercial quantities;

(iii) Continue to make diligent efforts to utilize the geothermal resource; and

(iv) Satisfy any other applicable requirements.

(b) The Secretary:

(1) Requires or causes the cessation of production; or

(2) Determines that the cessation in production is required or otherwise caused by:

(i) The Secretary of the Air Force, Army, or Navy;

(ii) A state or a political subdivision of a state; or

(iii) Force majeure.

(c) The discontinuance of production is caused by the performance of maintenance necessary to maintain operations. Such maintenance is

considered a production activity, not a cessation of production, and maintenance may include activities such as overhauling your power plant, re-drilling or re-working wells that are critical to plant operation, or repairing and improving gathering systems or transmission lines, that necessitate the discontinuation of production. You must obtain BLM approval by submitting a Geothermal Sundry Notice if the activity will require more than one calendar month, for it to be classified as maintenance under this paragraph. The BLM must receive the Geothermal Sundry Notice before the end of the first calendar month in which there will be no production.

§ 3212.16 Can I apply to BLM to reduce, suspend, or waive the royalty or rental of my lease?

(a) You may apply for a suspension, reduction, or waiver of your rent or royalty for any lease or portion thereof. BLM may grant your request in the interest of conservation and to encourage the greatest ultimate recovery of geothermal resources, if we determine that:

(1) Granting the request is necessary to promote development; or

(2) You cannot successfully operate the lease under its current terms.

(b) BLM will not approve a rental or royalty reduction, suspension, or waiver unless all rental or royalty interest owners other than the United States accept a similar reduction, suspension, or waiver.

§ 3212.17 What information must I submit when I request that BLM suspend, reduce, or waive my royalty or rental?

(a) Your request for suspension, reduction, or waiver of the royalty or rental must include all information BLM needs to determine if the lease can be operated under its current terms, including:

(1) The type of reduction you seek;

(2) The serial number of your lease;

(3) The names and addresses of the lessee and operator;

(4) The location and status of wells;

(5) A summary of monthly production from your lease; and

(6) A detailed statement of expenses and costs.

(b) If you are applying for a royalty or rental reduction, suspension, or waiver, you must also provide to BLM a list of names of royalty and rental interest owners other than the United States, the amounts of royalties or payments out of production and rent paid to them, and every effort you have made to reduce these payments.

§ 3212.18 What are the production incentives for leases?

You will receive a production incentive in the form of a temporary 50 percent reduction in your royalties under MMS regulations at 30 CFR 218.307 if:

(a) Your lease was in effect prior to August 8, 2005;

(b) You do not convert the royalty rates of your lease under § 3212.25;

(c) By August 7, 2011, production from or allocated to your lease is utilized for commercial production in a:

(1) New facility (see § 3212.22); or

(2) Qualified expansion project (see § 3212.21); and

(d) The production from your lease is used for the commercial generation of electricity.

§ 3212.19 How do I apply for a production incentive?

Submit to BLM a written request for a production incentive describing a project that may qualify as a new facility or qualified expansion project. Identify whether you are requesting that the project be considered as a new facility (see § 3212.22) or as a qualified expansion project (see § 3212.21) and explain why your project qualifies under these regulations. The request must be received no later than August 7, 2011.

§ 3212.20 How will BLM review my request for a production incentive?

(a) BLM will review your request on a case-by-case basis to determine whether your project meets the criteria for a qualified expansion project under § 3212.21 or a new facility under § 3212.22. If it does not meet the criteria for the type of project you requested, we will determine whether it meets the criteria for the other type of production incentive project.

(b) If BLM determines that you have a qualified expansion project, we will, as part of our approval, provide you with a schedule of monthly target net generation amounts that you must exceed to qualify for the production incentive. These amounts will quantify the required 10 percent increase in net generation over the projected net generation without the project. The schedule will be specific to the facility or facilities that are affected by the project and will cover the 48-month time period during which your production incentive may apply.

(c) If BLM determines that you have met the criteria for a new facility, we will provide you with written notification of this determination.

§ 3212.21 What criteria establish a qualified expansion project for the purpose of obtaining a production incentive?

A qualified expansion project must meet the following criteria:

(a) It must involve substantial capital expenditure. Examples include the drilling of additional wells, retrofitting existing wells and collection systems to increase production rates, retrofitting turbines or power plant components to increase efficiency, adding additional generation capacity to existing plants, and enhanced recovery projects such as augmented injection. Projects that are not associated with substantial capital expenditure, such as opening production valves and operating existing equipment at higher rates, do not qualify as expansion projects.

(b) The project must have the potential to increase the net generation by more than 10 percent over the projected generation without the project, using data from the previous 5 years. If 5 years of data are not available, it is not a qualified expansion project.

§ 3212.22 What criteria establish a new facility for the purpose of obtaining a production incentive?

(a) Criteria for determining whether a project is a new facility for the purpose of obtaining a production incentive include:

(1) The project requires a new site license or facility construction permit if it is on Federal lands;

(2) The project requires a new Commercial Use Permit;

(3) The project includes at least one new turbine-generator unit;

(4) The project involves a new sales contract;

(5) The project involves a new site or substantially larger footprint; and

(6) The project is not contiguous to an existing project.

(b) Generally, a new facility will not:

(1) Be permitted only with a Geothermal Drilling Permit;

(2) Be constructed entirely within the footprint of an existing facility; or

(3) Involve only well-field projects such as drilling new wells, increasing injection, and enhanced recovery projects.

§ 3212.23 How will the production incentive apply to a qualified expansion project?

(a) The production incentive will begin on the first day of the month following the commencement of commercial operation of the qualified expansion project. The incentive will be in effect for up to 48 consecutive months, applicable only to those months in which the actual generation from the facility or facilities affected by

the project exceeds the target generation established by BLM. The amount of the production incentive is established in MMS regulations at 30 CFR 218.307.

(b) The production incentive will apply only to the increase in net generation. The increase in generation for any month in which the production incentive is in effect will be determined as follows:

$$\Delta G_i = G_{a,i} - \frac{G_{t,i}}{1.1}$$

where:

i is a month for which a production incentive is in effect;

[Delta]Gi is the increase in generation for month i to which the production incentive applies;

$G_{a,i}$ is the actual generation in month i;

$G_{t,i}$ is the target generation in month i, as provided in § 3212.19(b).

§ 3212.24 How will the production incentive apply to a new facility?

(a) If BLM determines that your project qualifies as a new facility, the production incentive will begin on the first day of the month following the commencement of commercial operations at that facility, and will be in effect for 48 consecutive months. The incentive applies to the entire commercial generation of electricity from the new facility.

(b) The amount of the production incentive is established in MMS regulations at 30 CFR 218.307.

§ 3212.25 Can I convert the royalty rate terms of my lease in effect before August 8, 2005, to the terms of the Geothermal Steam Act, as amended by the Energy Policy Act of 2005?

(a) If a lease was in effect before August 8, 2005, the lessee may submit to BLM a request to modify the royalty rate terms of your lease to the applicable royalty rate or direct use fee terms prescribed in the Geothermal Steam Act as amended by the Energy Policy Act of 2005. You may withdraw your request before it is granted, but once you accept the new terms, you may not revert to the earlier royalty rates. If your request to modify is granted, the new royalty rate or direct use fees will apply to all geothermal resources produced from your lease for as long as your lease remains in effect. A modification under this section does not affect the royalty rate for byproducts.

(b)(1) The royalty rate for leases whose terms are modified and production from which is used for commercial generation of electricity is prescribed in § 3211.17(b).

(2) The direct use fees or royalty rate for leases whose terms are modified and production from which is used directly for purposes other than commercial generation of electricity is prescribed in § 3211.18(a) of this part and MMS regulations at 30 CFR 206.356.

§ 3212.26 How do I submit a request to modify the royalty rate terms of my lease to the applicable terms prescribed in the Energy Policy Act of 2005?

(a) You must submit a written request to BLM that contains the serial numbers of the leases whose terms you wish to modify and:

(1) For direct use operations, any other information that BLM may require; or

(2) For commercial electrical generation operations, for each month during the 10-year period preceding the date of your request (or from when electrical generation operations began if less than 10 years before the date of your request):

(i) The gross proceeds received by you or your affiliate from the sale of electricity;

(ii) The amount of royalty paid;

(iii) The amount of generating and transmission deductions subtracted from the gross proceeds to derive the royalty value if you are using the geothermal netback procedure under MMS regulations to calculate royalty value; and

(iv) Any other information that BLM may require.

(b) BLM must receive your request no later than:

(1) For leases whose geothermal resource production is used directly for purposes other than commercial generation of electricity, 18 months after the effective date of the schedule of fees established by MMS under 30 CFR 206.356(b); or

(2) For leases whose geothermal resource production is used for commercial generation of electricity, December 1, 2008.

§ 3212.27 How will BLM or MMS review my request to modify the lease royalty rate terms?

After you submit your request to modify the royalty rate terms under § 3212.25, BLM will:

(a) Review your application, and if BLM determines that:

(1) Your application is complete and contains all necessary information, we will notify you of the date on which your complete request was received; or

(2) Your request is not complete or does not contain all necessary information, we will notify you of the additional information that is required;

(b) Analyze the data you submitted to establish a royalty rate if the geothermal resources are used for commercial electrical generation;

(c) Consult with MMS and any state or local governments that may be affected by the change in royalty rate terms; and

(d)(1) No later than 140 days after the day on which we determine a complete request with all necessary information was received, BLM will send you written notification of the proposed royalty rate that BLM determines to be revenue neutral.

(2) If you reject the proposed rate, we must receive written notification from you no later than 30 days after the date of your receipt of our notification. BLM will accept a faxed notification received within the 30-day time limit. However, following the fax, you must submit to BLM written notification which BLM must receive no later than the 179th day following the day on which BLM determines we received your complete request.

(3) If you reject the proposed royalty rate on a timely basis:

(i) BLM will not issue a decision modifying the royalty rate terms of your lease;

(ii) The existing royalty rate terms in your lease continue to apply; and

(iii) You may not reapply for a royalty rate term conversion under § 3212.25.

(4) Unless timely written notification is received from you rejecting the proposed rate, BLM will issue a decision modifying the royalty rate terms of your lease no later than 180 days after the day on which we determine a complete request was received. The effective date of the new royalty rate is the first day of the month following the date on which the decision was issued. For example, a decision issued on July 21, will become effective on August 1.

Subpart 3213—Relinquishment, Termination, and Cancellation

§ 3213.10 Who may relinquish a lease?

Only the record title owner may relinquish a lease in full or in part. If there is more than one record title owner for a lease, all record title owners must sign the relinquishment.

§ 3213.11 What must I do to relinquish a lease?

Send BLM a written request that includes the serial number of each lease you are relinquishing. If you are relinquishing the entire lease, no legal description of the land is required. If you are relinquishing part of the lease, you must describe the lands to be relinquished. BLM may require additional information if necessary.

§ 3213.12 May BLM accept a partial relinquishment if it will reduce my lease to less than 640 acres?

Except for direct use leases, lands remaining in your lease must contain at least 640 acres, or all of your leased lands must be in one section, whichever is less. Otherwise, we will not accept your partial relinquishment. BLM will only allow an exception if it will further development of the resource. The size of direct use leases is addressed in § 3205.07.

§ 3213.13 When does relinquishment take effect?

(a) If BLM determines your relinquishment request meets the requirements of § § 3213.11 and 3213.12, your relinquishment is effective the day we receive it.

(b) Notwithstanding the relinquishment, you and your surety continue to be responsible for:

(1) Paying all rents and royalties due before the relinquishment was effective;

(2) Plugging and abandoning all wells on the relinquished land;

(3) Restoring and reclaiming the surface and other resources; and

(4) Complying with § 3200.4.

§ 3213.14 Will BLM terminate my lease if I do not pay my rent on time?

(a) If MMS does not receive your second and subsequent year's rental payment in full by the lease anniversary date, MMS will notify you that the rent payment is overdue. You have 45 days after the anniversary date to pay the rent plus a 10 percent late fee. If MMS does not receive your rental plus the late fee by the end of the 45-day period, BLM will terminate your lease.

(b) If you receive notification from MMS under paragraph (a) of this section more than 15 days after the lease anniversary date, BLM will reinstate a lease that was terminated under paragraph (a) of this section if MMS receives the rent plus a 10 percent late fee within 30 days after you receive the notification.

§ 3213.15 How will BLM notify me if it terminates my lease?

BLM will send you a notice of the termination by certified mail, return receipt requested.

§ 3213.16 May BLM cancel my lease?

(a) BLM may cancel your lease if it was issued in error.

(b) If BLM cancels your lease because it was issued in error, the cancellation is effective when you receive it.

§ 3213.17 May BLM terminate my lease for reasons other than non-payment of rentals?

BLM may terminate your lease for reasons other than non-payment of rentals, after giving you 30 days written notice, if we determine that you violated the requirements of § 3200.4, including, but not limited to the nonpayment of royalties and fees under 30 CFR parts 206 and 218.

§ 3213.18 When is a termination effective?

If BLM terminates your lease because we determined that you violated the requirements of § 3200.4, the termination takes effect 30 days after the date you receive notice of our determination.

§ 3213.19 What can I do if BLM notifies me that my lease is being terminated because of a violation of the law, regulations, or lease terms?

(a) You can prevent termination of your lease if, within 30 days after receipt of our notice:

(1) You correct the violation; or

(2) You show us that you cannot correct the violation during the 30-day period and that you are making a good faith attempt to correct the violation as quickly as possible, and thereafter you diligently proceed to correct the violation.

(b)(1) You may appeal the lease termination. You have 30 days after receipt of our notice to file an appeal (see parts 4 and 1840 of this title). We will stay the termination of your lease while your appeal is pending.

(2) You are entitled to a hearing on the violation or the proposed lease termination if you request the hearing when you file the appeal. The period for correction of the violation will be extended to 30 days after the decision on appeal is made if the decision concludes that a violation exists.

Subpart 3214—Personal and Surety Bonds

§ 3214.10 Who must post a geothermal bond?

(a) The lessee or operator must post a bond with BLM before exploration, drilling, or utilization operations begin.

(b) Before we approve a lease transfer or recognize a new designated operator, the lessee or operator must file a new bond or a rider to the existing bond, unless all previous operations on the land have already been reclaimed.

§ 3214.11 Who must my bond cover?

Your bond must cover all record title owners, operating rights owners, operators, and any person who conducts operations on your lease.

§ 3214.12 What activities must my bond cover?

Your bond must cover:

(a) Any activities related to exploration, drilling, utilization, or associated operations on a Federal lease;

(b) Reclamation of the surface and other resources;

(c) Rental and royalty payments; and

(d) Compliance with the requirements of § 3200.4.

§ 3214.13 What is the minimum dollar amount required for a bond?

The minimum bond amount varies depending on the type of activity you are proposing and whether your bond will cover individual, statewide, or nationwide activities. The minimum dollar amounts and bonding options for each type of activity are found in the following regulations:

(a) Exploration operations—see § 3251.15;

(b) Drilling operations—see § 3261.18; and

(c) Utilization operations—see § § 3271.12 and 3273.19.

§ 3214.14 May BLM increase the bond amount above the minimum?

(a) BLM may increase the bond amount above the minimums referenced in § 3214.13 when:

(1) We determine that the operator has a history of noncompliance;

(2) We previously had to make a claim against a surety because any one person who is covered by the new bond failed to plug and abandon a well and reclaim the surface in a timely manner;

(3) MMS has notified BLM that a person covered by the bond owes uncollected royalties; or

(4) We determine that the bond amount will not cover the estimated reclamation cost.

(b) We may increase bond amounts to any level, but we will not set that amount higher than the total estimated costs of plugging wells, removing structures, and reclaiming the surface and other resources, plus any uncollected royalties due MMS or moneys owed to BLM due to previous violations.

§ 3214.15 What kind of financial guarantee will BLM accept to back my bond?

We will not accept cash bonds. We will only accept:

(a) Corporate surety bonds, provided that the surety company is approved by the Department of Treasury (see Department of the Treasury Circular No. 570, which is published in the **Federal Register** every year on or about July 1); and

(b) Personal bonds, which are secured by a cashier's check, certified check, certificate of deposit, negotiable securities such as Treasury notes, or an

irrevocable letter of credit (see § § 3214.21 and 3214.22).

§ 3214.16 Is there a special bond form I must use?

You must use a BLM-approved bond form (Form 3000–4, or Form 3000–4a, June 1988 or later editions) for corporate surety bonds and personal bonds.

§ 3214.17 Where must I submit my bond?

File personal or corporate surety bonds and statewide bonds in the BLM State Office that oversees your lease or operations. You may file nationwide bonds in any BLM State Office. File bond riders in the BLM State Office where your underlying bond is located. For personal or corporate surety bonds, file one originally-signed copy of the bond.

§ 3214.18 Who will BLM hold liable under the lease and what are they liable for?

BLM will hold all interest owners in a lease jointly and severally liable for compliance with the requirements of § 3200.4 for obligations that accrue while they hold their interest. Among other things, all interest owners are jointly and severally liable for:

(a) Plugging and abandoning wells;

(b) Reclaiming the surface and other resources;

(c) Compensatory royalties assessed for drainage; and

(d) Rent and royalties due.

§ 3214.19 What are my bonding requirements when a lease interest is transferred to me?

(a) Except as otherwise provided in this section, if the lands to be transferred to you contain a well or any other surface disturbance which the original lessee did not reclaim, you must post a bond under this subpart before BLM will approve the transfer.

(b) If the original lessee does not transfer all interest in the lease to you, you may become a co-principal on the original bond, rather than posting a new bond.

(c) You do not need to post an additional bond if:

(1) You previously furnished a statewide or nationwide bond sufficient to cover the lands transferred; or

(2) The operator provided the original bond, and the operator does not change.

§ 3214.20 How do I modify my bond?

You may modify your bond by submitting a rider to the BLM State Office where your bond is held. There is no special form required.

§ 3214.21 What must I do if I want to use a certificate of deposit to back my bond?

Your certificate of deposit must:

(a) Be issued by a Federally-insured financial institution authorized to do business in the United States;

(b) Include on its face the statement, ''This certificate cannot be redeemed by any party without approval by the Secretary of the Interior or the Secretary's delegate;'' and

(c) Be payable to the Department of the Interior, Bureau of Land Management.

§ 3214.22 What must I do if I want to use a letter of credit to back my bond?

Your letter of credit must:

(a) Be issued by a Federally-insured financial institution authorized to do business in the United States;

(b) Be payable to the Department of the Interior—Bureau of Land Management;

(c) Be irrevocable during its term and have an initial expiration date of no sooner than 1 year after the date we receive it;

(d) Be automatically renewable for a period of at least 1 year beyond the end of the current term, unless the issuing financial institution gives us written notice, at least 90 days before the letter of credit expires, that it will no longer renew the letter of credit; and

(e) Include a clause authorizing the Secretary of the Interior to demand immediate payment, in part or in full:

(i) If you do not meet your obligations under the requirements of § 3200.4; or

(ii) Provide substitute security for a letter of credit which the issuer has stated it will not renew before the letter of credit expires.

Subpart 3215—Bond Release, Termination, and Collection

§ 3215.10 When may BLM collect against my bond?

If you fail to comply with the requirements listed at § 3200.4, we may collect money from the bond to correct your noncompliance. This amount can be as large as the face amount of the bond. Some examples of when we will collect against your bond are when you do not properly or in a timely manner:

(a) Plug and abandon a well;

(b) Reclaim the lease area;

(c) Pay outstanding royalties; or

(d) Pay assessed royalties to compensate for drainage.

§ 3215.11 Must I replace my bond after BLM collects against it?

If BLM collects against your bond, before you conduct any further operations you must either:

(a) Post a new bond equal to the value of the original bond; or

(b) Restore your existing bond to the original face amount.

§ 3215.12 What will BLM do if I do not restore the face amount or file a new bond?

If we collect against your bond and you do not restore it to the original face amount, we may shut in any well(s) or utilization facilities covered by that bond and may terminate affected leases.

§ 3215.13 Will BLM terminate or release my bond?

(a) BLM does not cancel or terminate bonds. We may inform you that your existing bond is insufficient.

(b) The bond provider may terminate your bond provided it gives you and BLM 30-days notice. The bond provider remains responsible for obligations that accrued during the period of liability while the bond was in effect.

(c) BLM will release a bond, terminating all liability under that bond, if:

(1) The new bond that you file covers all existing liabilities and we accept it; or

(2) After a reasonable period of time, we determine that you paid all royalties, rents, penalties, and assessments, and satisfied all permit and lease obligations.

(d) If an adequate bond is not in place, do not conduct any operations until you provide a new bond that meets our requirements.

§ 3215.14 When BLM releases my bond, does that end my responsibilities?

When BLM releases your bond, we relinquish the security but we continue to hold the lessee or operator responsible for noncompliance with applicable requirements under the lease. Specifically, we do not waive any legal claim we may have against any person under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*), or other laws and regulations.

Subpart 3216—Transfers

§ 3216.10 What types of lease interests may I transfer?

You may transfer record title or operating rights, but you need BLM approval before your transfer is effective (see § 3216.21).

§ 3216.11 Where must I file a transfer request?

File your transfer in the BLM State Office that handles your lease.

§ 3216.12 When does a transferee take responsibility for lease obligations?

After BLM approves your transfer, the transferee is responsible for performing all lease obligations accruing after the date of the transfer, and for plugging

and abandoning wells which exist and are not plugged and abandoned at the time of the transfer.

§ 3216.13 What are my responsibilities after I transfer my interest?

After you transfer an interest in a lease you are still responsible for rents, royalties, compensatory royalties, and other obligations that accrued before your transfer became effective. You also remain responsible for plugging and abandoning any wells that were drilled or existing on the lease while you held your interest. You must carry out this responsibility upon the BLM's determination at any future time that the wells must be plugged and abandoned.

§ 3216.14 What filing fees and forms does a transfer require?

With each transfer request you must send BLM the correct form and pay the transfer fee required by this section. When you calculate your fee, make sure it covers the full amount. For example, if you are transferring record title for three leases, submit $225 with the application.

Use the following chart to determine the number and types of forms required. The applicable transfer fees are in the fee schedule in § 3000.12 of this chapter.

Type of transfer	Form required?	Form No.	Number of copies
(a) Record Title	Yes	3000–3	2 executed copies.
(b) Operating Rights	Yes	3000–3(a)	2 executed copies.
(c) Estate Transfers	No	N/A	1 List of Leases.
(d) Corporate Mergers	No	N/A	1 List of Leases.
(e) Name Changes	No	N/A	1 List of Leases.

§ 3216.15 When must I file my transfer request?

(a) File a request to transfer record title or operating rights within 90 days after you sign an agreement with the transferee. If BLM receives your request more than 90 days after signing, we may require you to re-certify that you still intend to complete the transfer.

(b) There is no specific time deadline for filing estate transfers, corporate mergers, and name changes. File them within a reasonable time.

§ 3216.16 Must I file separate transfer requests for each lease?

File two copies of a separate request for each lease for which you are transferring record title or operating rights. The only exception is if you are transferring more than one lease to the same transferee, in which case you file two copies of one transfer request.

§ 3216.17 Where must I file estate transfers, corporate mergers, and name changes?

(a) If you have posted a bond for any Federal lease, you must file estate transfers, corporate mergers, and name changes in the BLM State Office that maintains your bond.

(b) If you have not posted a bond, you must file estate transfers, corporate mergers, and name changes in the State Office having jurisdiction over the lease.

§ 3216.18 How do I describe the lands in my lease transfer?

(a) If you are transferring an interest in your entire lease, you do not need to give BLM a legal description of the land.

(b) If you are transferring an interest in a portion of your lease, describe the lands that are transferred in the same way they are described in the lease.

§ 3216.19 May I transfer record title interest for less than 640 acres?

Except for direct use leases, you may transfer record title interest for less than 640 acres only if your transfer includes an irregular subdivision or all of the lands in your lease are in a section. We may make an exception to the minimum acreage requirements if it is necessary to conserve the resource.

§ 3216.20 When does a transfer segregate a lease?

If you transfer 100 percent of the record title interest in a portion of your lease, BLM will segregate the transferred portion from the original lease and give it a new serial number with the same terms and conditions as those in the original lease.

§ 3216.21 When is my transfer effective?

Your transfer is effective the first day of the month after we approve it.

§ 3216.22 Does BLM approve all transfer requests?

BLM will not approve a transfer if:

(a) The lease account is not in good standing;

(b) The transferee does not qualify to hold a lease under this part; or

(c) An adequate bond has not been provided.

Subpart 3217—Cooperative Agreements

§ 3217.10 What are unit agreements?

Under unit agreements, lessees unite with each other, or jointly or separately with others, in collectively adopting and operating under agreements to conserve the resources of any geothermal reservoir, field, or like area, or any part thereof. BLM will only approve unit agreements that we determine are in the public interest. Unit agreement application procedures are provided in part 3280 of this chapter.

§ 3217.11 What are communitization agreements?

Under communitization agreements (also called drilling agreements), operators who cannot independently develop separate tracts due to well-spacing or well development programs may cooperatively develop such tracts. Lessees may ask BLM to approve a communitization agreement or, in some cases, we may require the lessees to enter into such an agreement.

§ 3217.12 What does BLM need to approve my communitization agreement?

For BLM to approve a communitization agreement, you must give us the following information:

(a) The location of the separate tracts comprising the drilling or spacing unit;

(b) How you will prorate production or royalties to each separate tract based on total acres involved;

(c) The name of each tract operator; and

(d) Provisions for protecting the interests of all parties, including the United States.

§ 3217.13 When does my communitization agreement go into effect?

(a) Your communitization agreement is effective when BLM approves and signs it.

(b) Before we approve the agreement:

(1) All parties must sign the agreement; and

(2)(i) We must determine that the tracts cannot be independently developed; and

(ii) That the agreement is in the public interest.

§ 3217.14 When will BLM approve my drilling or development contract?

BLM may approve a drilling or development contract when:

(a) One or more geothermal lessees enter into the contract with one or more persons; or

(b) Lessees need the contract for regional exploration of geothermal resources;

(c) BLM has coordinated the review of the proposed contract with appropriate state agencies; and

(d) BLM determines that approval best serves or is necessary for the conservation of natural resources, public convenience or necessity, or the interests of the United States.

§ 3217.15 What does BLM need to approve my drilling or development contract?

For BLM to approve your drilling or development contract, you must send us:

(a) The contract and a statement of why you need it;

(b) A statement of all interests held by the contracting parties in that geothermal area or field;

(c) The type of operations and schedule set by the contract;

(d) A statement that the contract will not violate Federal antitrust laws by concentrating control over the production or sale of geothermal resources; and

(e) Any other information we may require to make a decision about the contract or to attach conditions of approval.

Subpart 3250—Exploration Operations—General

§ 3250.10 When do the exploration operations regulations apply?

(a) The exploration operations regulations contained in this subpart and subparts 3251 through 3256 apply to geothermal exploration operations:

(1) On BLM-administered public lands, whether or not they are leased for geothermal resources; and

(2) On lands whose surface is managed by another Federal agency, where BLM has leased the subsurface geothermal resources and the lease operator wishes to conduct exploration. In this case, we will consult with the surface managing agency regarding surface use and reclamation requirements before we approve the exploration operations.

(b) These regulations do not apply to:

(1) Unleased land administered by another Federal agency;

(2) Unleased geothermal resources whose surface land is managed by another Federal agency;

(3) Privately owned land; or

(4) Casual use activities.

§ 3250.11 May I conduct exploration operations on my lease, someone else's lease, or unleased land?

(a) You may request BLM approval to explore any BLM-managed public lands open to geothermal leasing, even if the lands are leased to another person. A BLM-approved exploration permit does not give you exclusive rights.

(b) If you wish to conduct operations on your lease, you may do so after we have approved your Notice of Intent to Conduct Geothermal Resource Exploration Operations. If the lands are already leased, your operations may not unreasonably interfere with or endanger those other operations or other authorized uses, or cause unnecessary or undue degradation of the lands.

§ 3250.12 What general standards apply to exploration operations?

BLM-approved exploration operations must:

(a) Meet all operational and environmental standards;

(b) Protect public health, safety, and property;

(c) Prevent unnecessary impacts on surface and subsurface resources;

(d) Be conducted in a manner consistent with the principles of multiple use; and

(e) Comply with the requirements of § 3200.4.

§ 3250.13 What additional BLM orders or instructions govern exploration?

BLM may issue the following types of orders or instructions:

(a) Geothermal resource operational orders that contain detailed requirements of nationwide applicability;

(b) Notices to lessees that contain detailed requirements on a statewide or regional basis;

(c) Other orders and instructions specific to a field or area;

(d) Conditions of approval contained in an approved Notice of Intent; and

(e) Verbal orders that BLM will confirm in writing.

§ 3250.14 What types of operations may I propose in my application to conduct exploration?

(a) You may propose any activity fitting the definition of ''exploration operations'' in § 3200.1. Submit Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations, together with the information required under § 3251.11, and BLM will review your proposal.

(b) The exploration operations regulations do not address drilling wells intended for production or injection, which is covered in subpart 3260, or geothermal resources utilization, which is covered in subpart 3270.

Subpart 3251—Exploration Operations: Getting BLM Approval

§ 3251.10 Do I need a permit before I start exploration operations?

BLM must approve a Notice of Intent to Conduct Geothermal Resource Exploration Operations (NOI) before you conduct exploration operations. The approved NOI, including any necessary conditions for approval, constitutes your permit.

§ 3251.11 What information is in a complete Notice of Intent to Conduct Geothermal Resource Exploration Operations application?

To obtain approval of exploration operations on BLM-managed lands, your application must:

(a) Include a complete and signed Form 3200–9, Notice of Intent to Conduct Geothermal Resource Exploration Operations that describes the lands you wish to explore;

(b) For operations other than drilling temperature gradient wells, describe your exploration plans and procedures, including the approximate starting and ending dates for each phase of operations;

(c) For drilling temperature gradient wells, describe your drilling and completion procedures, and include, for each well or for several wells you propose to drill in an area of geologic and environmental similarity:

(1) A detailed description of the equipment, materials, and procedures you will use;

(2) The depth of each well;

(3) The casing and cementing program;

(4) The circulation media (mud, air, foam, etc.);

(5) A description of the logs that you will run;

(6) A description and diagram of the blowout prevention equipment you will use during each phase of drilling;

(7) The expected depth and thickness of fresh water zones;

(8) Anticipated lost circulation zones;

(9) Anticipated temperature gradient in the area;

(10) Well site layout and design;

(11) Existing and planned access roads or ancillary facilities; and

(12) Your source of drill pad and road building material and water supply.

(d) Show evidence of bond coverage (see § 3251.15);

(e) Estimate how much surface disturbance your exploration may cause;

(f) Describe the proposed measures you will take to protect the environment and other resources;

(g) Describe methods to reclaim the surface; and

(h) Include all other information BLM may require.

§ 3251.12 What action will BLM take on my Notice of Intent to Conduct Geothermal Resource Exploration Operations?

(a) When BLM receives your Notice of Intent to Conduct Geothermal Resource Exploration Operations, we will make sure it is complete and signed, and review it for compliance with the requirements of § 3200.4.

(b) If the proposed operations are located on lands described under § 3250.10(a)(2), we will consult with the Federal surface management agency before approving your Notice of Intent.

(c) We will check your Notice of Intent for technical adequacy and we may require additional information.

(d) We will notify you if we need more information to process your Notice of Intent, and suspend the review of your Notice of Intent until we receive the information.

(e) After our review, we will notify you whether we approved or denied your Notice of Intent and of any conditions of approval.

§ 3251.13 Once I have an approved Notice of Intent, how can I change my exploration operations?

Send BLM a complete and signed Form 3260–3, Geothermal Sundry Notice, which fully describes the requested changes. Do not proceed with the change in operations until you receive written approval from BLM.

§ 3251.14 Do I need a bond for conducting exploration operations?

(a) You must not start any exploration operations on BLM-managed lands until we approve your bond. You may meet the requirement for an exploration bond in two ways:

(1) If you have an existing nationwide or statewide oil and gas exploration bond, provide a rider in an amount we have specified to include geothermal resources exploration operations; or

(2) If you must file a new bond for geothermal exploration, the minimum amounts are:

(i) $5,000 for a single operation;

(ii) $25,000 for all of your operations within a state; and

(iii) $50,000 for all of your operations on public lands nationwide.

(b) See subparts 3214 and 3215 for additional details on bonding procedures.

§ 3251.15 When will BLM release my bond?

BLM will release your bond after you request it and we determine that you have:

(a) Plugged and abandoned all wells;

(b) Reclaimed the land and, if necessary, resolved other environmental, cultural, scenic, or recreational issues; and

(c) Complied with the requirements of § 3200.4.

Subpart 3252—Conducting Exploration Operations

§ 3252.10 What operational standards apply to my exploration operations?

You must keep exploration operations under control at all times by:

(a) Conducting training during your operation to ensure that your personnel are capable of performing emergency procedures quickly and effectively;

(b) Using properly maintained equipment; and

(c) Using operational practices that allow for quick and effective emergency response.

§ 3252.11 What environmental requirements must I meet when conducting exploration operations?

(a) You must conduct your exploration operations in a manner that:

(1) Protects the quality of surface and subsurface waters, air, and other natural resources, including wildlife, soil, vegetation, and natural history;

(2) Protects the quality of cultural, scenic, and recreational resources;

(3) Accommodates other land uses, as BLM deems necessary; and

(4) Minimizes noise.

(b) You must remove or, with our permission, properly store all equipment and materials not in use.

(c) You must provide and use pits, tanks, and sumps of adequate capacity. They must be designed to retain all materials and fluids resulting from drilling temperature gradient wells or other operations, unless we have specified otherwise in writing. When they are no longer needed, you must properly abandon pits and sumps in accordance with your exploration permit.

(d) BLM may require you to submit a contingency plan describing procedures to protect public health, safety, property, and the environment.

§ 3252.12 How deep may I drill a temperature gradient well?

(a) You may drill a temperature gradient well to any depth that we approve in your exploration permit or sundry notice. In all cases, you may not flow test the well or perform injection tests of the well unless you follow the procedures for geothermal drilling operations in subparts 3260 through 3267.

(b) BLM may modify your permitted depth at any time before or during drilling, if we determine that the bottom hole temperature or other information indicates that drilling to the original permitted depth could directly encounter the geothermal resource or create risks to public health, safety, property, the environment, or other resources.

§ 3252.13 How long may I collect information from my temperature gradient well?

You may collect information from your temperature gradient well for as long as your permit allows.

§ 3252.14 How must I complete a temperature gradient well?

Complete temperature gradient wells to allow for proper abandonment, and to prevent interzonal migration of fluids. Cap all tubing when not in use.

§ 3252.15 When must I abandon a temperature gradient well?

When you no longer need it, or when BLM requires you to.

§ 3252.16 How must I abandon a temperature gradient well?

(a) Before abandoning your well, submit a complete and signed Sundry Notice, Form 3260–3, describing how you plan to abandon wells and reclaim the surface. Do not begin abandoning wells or reclaiming the surface until BLM approves your Sundry Notice.

(b) You must plug and abandon your well for permanent prevention of interzonal migration of fluids and migration of fluids to the surface. You must reclaim your well location according to the terms of BLM approvals and orders.

Subpart 3253—Reports: Exploration Operations

§ 3253.10 Must I share with BLM the data I collect through exploration operations?

(a) For exploration operations on your geothermal lease, you must submit all data you obtain as a result of the operations with a signed notice of completion of exploration operations under § 3253.11, unless we approve a later submission.

(b) For exploration operations on unleased lands or on leased lands where you are not the lessee or unit operator, you are not required to submit data. However, if you want your exploration operations to count toward your diligent exploration expenditure requirement

(see § 3210.13), or if you are making significant expenditures to extend your lease (see § 3208.14), you must send BLM the resulting data under the rules of those sections.

§ 3253.11 Must I notify BLM when I have completed my exploration operations?

After you complete exploration operations, send to BLM a complete and signed notice of completion of exploration operations, describing the exploration operations, well history, completion and abandonment procedures, and site reclamation measures. You must send this to BLM within 30 days after you:

(a) Complete any geophysical exploration operations;

(b) Complete the drilling of temperature gradient well(s) approved under your approved Notice of Intent to conduct exploration;

(c) Plug and abandon a temperature gradient well; and

(d) Plug shot holes and reclaim all exploration sites.

Subpart 3254—Inspection, Enforcement, and Noncompliance for Exploration Operations

§ 3254.10 May BLM inspect my exploration operations?

BLM may inspect your exploration operations to ensure compliance with the requirements of § 3200.4 and the regulations in this subpart.

§ 3254.11 What will BLM do if my exploration operations are not in compliance with my permit, other BLM approvals or orders, or the regulations in this part?

(a) BLM will issue you a written Incident of Noncompliance and direct you to correct the problem within a set time. If the noncompliance continues or is serious in nature, we will take one or more of the following actions:

(1) Correct the problem at your expense;

(2) Direct you to modify or shut down your operations; or

(3) Collect all or part of your bond.

(b) We may also require you to take actions to prevent unnecessary impacts on the lands. If so, we will notify you of the nature and extent of any required measures and the time you have to complete them.

(c) Noncompliance may result in BLM terminating your lease, if appropriate under §§ 3213.17 through 3213.19.

Subpart 3255—Confidential, Proprietary Information

§ 3255.10 Will BLM disclose information I submit under these regulations?

All Federal and Indian data and information submitted to the BLM are subject to part 2 of this title. Part 2 includes the regulations of the Department of the Interior covering public disclosure of data and information contained in Department records. Certain mineral information not protected from disclosure under part 2 may be made available for inspection without a Freedom of Information Act (FOIA) request.

§ 3255.11 When I submit confidential, proprietary information, how can I help ensure it is not available to the public?

When you submit data and information that you believe to be exempt from disclosure by 43 CFR part 2, you must clearly mark each page that you believe contains confidential information. BLM will keep all data and information confidential to the extent allowed by 43 CFR 2.13(c).

§ 3255.12 How long will information I give BLM remain confidential or proprietary?

The FOIA (5 U.S.C. 552) does not provide a finite period of time during which information may be exempt from public disclosure. BLM will review each situation individually and in accordance with part 2 of this title.

§ 3255.13 How will BLM treat Indian information submitted under the Indian Mineral Development Act?

Under the Indian Mineral Development Act of 1982 (IMDA) (25 U.S.C. 2101 *et seq.*), the Department of the Interior will hold as privileged proprietary information of the affected Indian or Indian tribe:

(a) All findings forming the basis of the Secretary's intent to approve or disapprove any Minerals Agreement under IMDA; and

(b) All projections, studies, data, or other information concerning a Minerals Agreement under IMDA, regardless of the date received, related to:

(1) The terms, conditions, or financial return to the Indian parties;

(2) The extent, nature, value, or disposition of the Indian mineral resources; or

(3) The production, products, or proceeds thereof.

§ 3255.14 How will BLM administer information concerning other Indian minerals?

For information concerning Indian minerals not covered by § 3255.13, BLM will withhold such records as may be withheld under an exemption to the FOIA when it receives a request for information related to tribal or Indian minerals held in trust or subject to restrictions on alienation.

§ 3255.15 When will BLM consult with Indian mineral owners when information concerning their minerals is the subject of a FOIA request?

(a) We use the standards and procedures of § 2.15(d) of this title before making a decision about the applicability of FOIA exemption 4 to information obtained from a person outside the United States Government.

(b) BLM will notify the Indian mineral owner(s) identified in the records of the Bureau of Indian Affairs (BIA), and BIA, and give them a reasonable period of time to state objections to disclosure. BLM will issue this notice following consultation with a submitter under § 2.15(d) of this title if:

(1) BLM determines that the submitter does not have an interest in withholding the records that can be protected under FOIA; and

(2) BLM has reason to believe that disclosure of the information may result in commercial or financial injury to the Indian mineral owner(s), but is uncertain that such is the case.

Subpart 3256—Exploration Operations Relief and Appeals

§ 3256.10 How do I request a variance from BLM requirements that apply to my exploration operations?

(a) You may submit a request for a variance for your exploration operations from any requirement in § 3200.4. Your request must include enough information to explain:

(1) Why you cannot comply with the regulatory requirement; and

(2) Why you need the variance to control your well, conserve natural resources, or protect public health and safety, property, or the environment.

(b) BLM may approve your request orally or in writing. If we give you an oral approval, we will follow up with written confirmation.

§ 3256.11 How may I appeal a BLM decision regarding my exploration operations?

You may appeal a BLM decision regarding your exploration operations in accordance with § 3200.5.

Subpart 3260—Geothermal Drilling Operations—General

§ 3260.10 What types of geothermal drilling operations are covered by these regulations?

(a) The regulations in subparts 3260 through 3267 establish permitting and

operating procedures for drilling wells and conducting related activities for the purposes of performing flow tests, producing geothermal fluids, or injecting fluids into a geothermal reservoir. These subparts also address redrilling, deepening, plugging back, and other subsequent well operations.

(b) The operations regulations in subparts 3260 through 3267 do not address conducting exploration operations, which are covered in subpart 3250, or geothermal resources utilization, which is covered in subpart 3270.

§ 3260.11 What general standards apply to my drilling operations?

Your drilling operations must:

(a) Meet all environmental and operational standards;

(b) Prevent unnecessary impacts on surface and subsurface resources;

(c) Conserve geothermal resources and minimize waste;

(d) Protect public health, safety, and property; and

(e) Comply with the requirements of § 3200.4.

§ 3260.12 What other orders or instructions may BLM issue?

BLM may issue:

(a) Geothermal resource operational orders for detailed requirements that apply nationwide;

(b) Notices to Lessees for detailed requirements on a statewide or regional basis;

(c) Other orders and instructions specific to a field or area;

(d) Permit conditions of approval; and

(e) Oral orders, which will be confirmed in writing.

Subpart 3261—Drilling Operations: Getting a Permit

§ 3261.10 How do I get approval to begin well pad construction?

(a) If you do not have an approved geothermal drilling permit, Form 3260–2, apply using a completed and signed Sundry Notice, Form 3260–3, to build well pads and access roads. Send us a complete operations plan (see § 3261.12) and an acceptable bond with your Sundry Notice. You may start well pad construction after we approve your Sundry Notice.

(b) If you already have an approved drilling permit and you have provided an acceptable bond, you do not need any further permission from BLM to start well pad construction, unless you intend to change something in the approved permit. If you propose a change in an approved permit, send us a completed and signed Sundry Notice so we may review your proposed change. Do not proceed with the change until we approve your Sundry Notice.

§ 3261.11 How do I apply for approval of drilling operations and well pad construction?

(a) Send to BLM:

(1) A completed and signed drilling permit application, Form 3260–2;

(2) A complete operations plan (§ 3261.12);

(3) A complete drilling program (§ 3261.13); and

(4) An acceptable bond (§ 3261.18).

(b) Do not start any drilling operations until after BLM approves the permit.

§ 3261.12 What is an operations plan?

An operations plan describes how you will drill for and test the geothermal resources covered by your lease. Your plan must tell BLM enough about your proposal to allow us to assess the environmental impacts of your operations. This information should generally include:

(a) Well pad layout and design;

(b) A description of existing and planned access roads;

(c) A description of any ancillary facilities;

(d) The source of drill pad and road building material;

(e) The water source;

(f) A statement describing surface ownership;

(g) A description of procedures to protect the environment and other resources;

(h) Plans for surface reclamation; and

(i) Any other information that BLM may require.

§ 3261.13 What is a drilling program and how do I apply for drilling program approval?

(a) A drilling program describes all the operational aspects of your proposal to drill, complete, and test a well.

(b) Send to BLM:

(1) A detailed description of the equipment, materials, and procedures you will use;

(2) The proposed/anticipated depth of the well;

(3) If you plan to directionally drill your well, also send us:

(i) The proposed bottom hole location and distances from the nearest section or tract lines;

(ii) The kick-off point;

(iii) The direction of deviation;

(iv) The angle of build-up and maximum angle; and

(v) Plan and cross section maps indicating the surface and bottom hole locations;

(4) The casing and cementing program;

(5) The circulation media (mud, air, foam, etc.);

(6) A description of the logs that you will run;

(7) A description and diagram of the blowout prevention equipment you will use during each phase of drilling;

(8) The expected depth and thickness of fresh water zones;

(9) Anticipated lost circulation zones;

(10) Anticipated reservoir temperature and pressure;

(11) Anticipated temperature gradient in the area;

(12) A plat certified by a licensed surveyor showing the surveyed surface location and distances from the nearest section or tract lines;

(13) Procedures and durations of well testing; and

(14) Any other information we may require.

§ 3261.14 When must I give BLM my operations plan?

Send us a complete operations plan before you begin any surface disturbance on a lease. You do not need to submit an operations plan for subsequent well operations or altering existing production equipment, unless these activities will cause more surface disturbance than originally approved, or we notify you that you must submit an operations plan. Do not start any activities that will result in surface disturbance until we approve your drilling permit or Sundry Notice.

§ 3261.15 Must I give BLM my drilling permit application, drilling program, and operations plan at the same time?

You may submit your completed and signed drilling permit application and complete drilling program and operations plan either together or separately.

(a) If you submit them together and we approve your drilling permit, the approved drilling permit will authorize both the pad construction and the drilling and testing of the well.

(b) If you submit the operations plan separately from the drilling permit application and program, you must:

(1) Submit the operations plan before the drilling permit application and drilling program to allow BLM time to comply with National Environmental Policy Act (NEPA); and

(2) Submit a completed and signed Sundry Notice for well pad and access road construction. Do not begin construction until we approve your Sundry Notice.

§ 3261.16 Can my operations plan, drilling permit, and drilling program apply to more than one well?

(a) Your operations plan and drilling program can sometimes be combined to cover several wells, but your drilling

permit cannot. To include more than one well in your operations plan, give us adequate information for all well sites, and we will combine your plan to cover those well sites that are in areas of similar geology and environment.

(b) Your drilling program may also apply to more than one well, provided you will drill the wells in the same manner, and you expect to encounter similar geologic and reservoir conditions.

(c) You must submit a separate geothermal drilling permit application for each well.

§ 3261.17 How do I amend my operations plan or drilling permit?

(a) If BLM has not yet approved your operations plan or drilling permit, send us your amended plan and completed and signed permit application.

(b) To amend an approved operations plan or drilling permit, submit a completed and signed Sundry Notice describing your proposed change. Do not start any amended operations until after BLM approves your drilling permit or Sundry Notice.

§ 3261.18 Do I need to file a bond with BLM before I build a well pad or drill a well?

Before starting any operation, you must:

(a) File with BLM either a surety or personal bond in the following minimum amount:

(1) $10,000 for a single lease;

(2) $50,000 for all of your operations within a state; or

(3) $150,000 for all of your operations nationwide;

(b) Get our approval of your surety or personal bond; and

(c) To cover any drilling operations on all leases committed to a unit, either submit a bond for that unit in an amount we specify, or provide a rider to a statewide or nationwide bond specifically covering the unit in an amount we specify.

(d) See subparts 3214 and 3215 for additional details on bonding procedures.

§ 3261.19 When will BLM release my bond?

BLM will release your bond after you request it and we determine that you have:

(a) Plugged and abandoned all wells;

(b) Reclaimed the surface and other resources; and

(c) Met all the requirements of § 3200.4.

§ 3261.20 How will BLM review applications submitted under this subpart and notify me of its decision?

(a) When we receive your operations plan, we will make sure it is complete and review it for compliance with the requirements of § 3200.4.

(b) If another Federal agency manages the surface of your lease, we will consult with it before we approve your drilling permit.

(c) We will review your drilling permit and drilling program or your Sundry Notice for well pad construction, to make sure they conform with your operations plan and any mitigation measures we developed while reviewing your plan.

(d) We will check your drilling permit and drilling program for technical adequacy and may require additional information.

(e) We will check your drilling permit for compliance with the requirements of § 3200.4.

(f) If we need any further information to complete our review, we will contact you in writing and suspend our review until we receive the information.

(g) After our review, we will notify you as to whether your permit has been approved or denied, as well as any conditions of approval.

§ 3261.21 How do I get approval to change an approved drilling operation?

(a) Send BLM a Sundry Notice, form 3260–3, describing the proposed changes. Do not proceed with the changes until we have approved them in writing, except as provided in paragraph (c) of this section. If your operations such as redrilling, deepening, drilling a new directional leg, or plugging back a well would significantly change your approved permit, BLM may require you to send us a new drilling permit (see 43 CFR 3261.13). A significant change would be, for example, redrilling the well to a completely different target, especially a target in an unknown area.

(b) If your changed drilling operation would cause additional surface disturbance, we may also require you to submit an amended operations plan.

(c) If immediate action is required to properly continue drilling operations, or to protect public health, safety, property or the environment, BLM may provide oral approval to change an approved drilling operation. However, you must submit a written Sundry Notice within 48 hours after we orally approve your change.

§ 3261.22 How do I get approval for subsequent well operations?

Send BLM a Sundry Notice describing your proposed operation. For some routine work, such as cleanouts, surveys, or general maintenance (see § 3264.11(b)), we may waive the Sundry Notice requirement. Contact your local BLM office to ask about waivers for subsequent well operations. Unless you receive a waiver, you must submit a Sundry Notice. Do not start your operations until we grant a waiver or approve the Sundry Notice.

Subpart 3262—Conducting Drilling Operations

§ 3262.10 What operational requirements must I meet when drilling a well?

(a) When drilling a well, you must:

(1) Keep the well under control at all times by:

(i) Conducting training during your operation to maintain the capability of your personnel to perform emergency procedures quickly and effectively;

(ii) Using properly maintained equipment; and

(iii) Using operational practices that allow for quick and effective emergency response.

(b) You must use sound engineering principles and take into account all pertinent data when:

(1) Selecting and using drilling fluid types and weights;

(2) Designing and implementing a system to control fluid temperatures;

(3) Designing and using blowout prevention equipment; and

(4) Designing and implementing a casing and cementing program.

(c) Your operation must always comply with the requirements of § 3200.4.

§ 3262.11 What environmental requirements must I meet when drilling a well?

(a) You must conduct your operations in a manner that:

(1) Protects the quality of surface and subsurface water, air, natural resources, wildlife, soil, vegetation, and natural history;

(2) Protects the quality of cultural, scenic, and recreational resources;

(3) Accommodates, as necessary, other land uses;

(4) Minimizes noise; and

(5) Prevents property damage and unnecessary or undue degradation of the lands.

(b) You must remove or, with BLM's approval, properly store all equipment and materials that are not in use.

(c) You must retain all fluids from drilling and testing the well in properly designed pits, sumps, or tanks.

(d) When you no longer need a pit or sump, you must abandon it and restore the site as we direct.

(e) BLM may require you to give us a contingency plan showing how you will protect public health and safety, property, and the environment.

§ 3262.12 Must I post a sign at every well?

Yes. Before you begin drilling a well, you must post a sign in a conspicuous place and keep it there throughout operations until the well site is reclaimed. Put the following information on the sign:

(a) The lessee or operator's name;

(b) Lease serial number;

(c) Well number; and

(d) Well location described by township, range, section, quarter-quarter section or lot.

§ 3262.13 May BLM require me to follow a well spacing program?

BLM may require you to follow a well spacing program if we determine that it is necessary for proper development. If we require well spacing, we will consider the following factors when we set well spacing:

(a) Hydrologic, geologic, and reservoir characteristics of the field, minimizing well interference;

(b) Topography;

(c) Interference with multiple use of the land; and

(d) Environmental protection, including ground water.

§ 3262.14 May BLM require me to take samples or perform tests and surveys?

(a) BLM may require you to take samples or to test or survey the well to determine:

(1) The well's mechanical integrity;

(2) The identity and characteristics of formations, fluids, or gases;

(3) Presence of geothermal resources, water, or reservoir energy;

(4) Quality and quantity of geothermal resources;

(5) Well bore angle and direction of deviation;

(6) Formation, casing, or tubing pressures;

(7) Temperatures;

(8) Rate of heat or fluid flow; and

(9) Any other necessary well information.

(b) See § 3264.11 for information on reporting requirements.

Subpart 3263—Well Abandonment

§ 3263.10 May I abandon a well without BLM's approval?

(a) You must have a BLM-approved Sundry Notice documenting your plugging and abandonment program before you start abandoning any well.

(b) You must also notify the local BLM office before you begin abandonment activities, so that we may witness the work. Contact your local BLM office before starting to abandon your well to find out what notification we need.

§ 3263.11 What information must I give BLM to approve my Sundry Notice for abandoning a well?

Send us a Sundry Notice with:

(a) All the information required in the well completion report (see § 3264.10), unless we already have that information;

(b) A detailed description of the proposed work, including:

(1) Type, depth, length, and interval of plugs;

(2) Methods you will use to verify the plugs (tagging, pressure testing, etc.);

(3) Weight and viscosity of mud that you will use in the uncemented portions;

(4) Perforating or removing casing; and

(5) Restoring the surface; and

(c) Any other information that we may require.

§ 3263.12 How will BLM review my Sundry Notice to abandon my well and notify me of their decision?

(a) When BLM receives your Sundry Notice, we will make sure it is complete and review it for compliance with the requirements of § 3200.4. We will notify you if we need more information or require additional procedures. If we need any further information to complete our review, we will contact you in writing and suspend our review until we receive the information. If we approve your Sundry Notice, we will send you an approved copy once our review is complete. Do not start abandonment of the well until we approve your Sundry Notice.

(b) BLM may orally approve plugging procedures for a well requiring immediate action. If we do, you must submit the information required in § 3263.11 within 48 hours after we give oral approval.

§ 3263.13 What must I do to restore the site?

You must remove all equipment and materials and restore the site according to the terms of your permit or other BLM approval.

§ 3263.14 May BLM require me to abandon a well?

If we determine that your well is no longer needed for geothermal resource production, injection, or monitoring, or if we determine that the well is not mechanically sound, BLM may order you to abandon the well. In either case, if you disagree you may explain to us why the well should not be abandoned. We will consider your reasons before we issue any final order.

§ 3263.15 May I abandon a producible well?

(a) You may abandon a producible well only after you receive BLM's approval. Before abandoning a producing well, send BLM the information listed in § 3263.11. We may also require you to explain why you want to abandon the well.

(b) BLM will deny your request if we determine that the well is needed:

(1) To protect a Federal lease from drainage; or

(2) To protect the environment or other resources of the United States.

Subpart 3264—Reports—Drilling Operations

§ 3264.10 What must I submit to BLM after I complete a well?

You must submit a Geothermal Well Completion Report, Form 3260–4, within 30 days after you complete a well. Your report must include the following:

(a) A complete, chronological well history;

(b) A copy of all logs;

(c) Copies of all directional surveys; and

(d) Copies of all mechanical, flow, reservoir, and other test data.

§ 3264.11 What must I submit to BLM after I finish subsequent well operations?

(a) Submit to BLM a subsequent well operations report within 30 days after completing operations. At a minimum, this report must include:

(1) A complete, chronological history of the work done;

(2) A copy of all logs;

(3) Copies of all directional surveys;

(4) The results of all sampling, tests, or surveys we require you to make (see § 3262.14);

(4) Copies of all mechanical, flow, reservoir, and other test data; and

(5) A statement of whether you achieved your goals. For example, if the well was acidized to increase production, state whether the production rate increased when you put the well back on line.

(b) We may waive this reporting requirement for work we determine to be routine, such as cleanouts, surveys, or general maintenance. To request a waiver, contact BLM. If you do not receive a waiver, you must submit the report.

§ 3264.12 What must I submit to BLM after I abandon a well?

Send us a well abandonment report within 30 days after you abandon a well. If you plan to restore the site at a later date, you may submit a separate report within 30 days after completing

site restoration. The well abandonment report must contain:

(a) A complete chronology of all work done;

(b) A description of each plug, including:

(1) Type and amount of cement used;

(2) Depth that the drill pipe or tubing was run to set the plug;

(3) Depth to top of plug; and

(4) If the plug was verified, whether it was done by tagging or pressure testing; and

(c) A description of surface restoration procedures.

§ 3264.13 What drilling and operational records must I maintain for each well?

You must keep the following information for each well, and make it available for BLM to inspect, upon request:

(a) A complete and accurate drilling log, in chronological order;

(b) All other logs;

(c) Water or steam analyses;

(d) Hydrologic or heat flow tests;

(e) Directional surveys;

(f) A complete log of all subsequent well operations, such as cementing, perforating, acidizing, and well cleanouts; and

(g) Any other information regarding the well that could affect its status.

§ 3264.14 How do I notify BLM of accidents occurring on my lease?

You must orally inform us of all accidents that affect operations or create environmental hazards within 24 hours of the accident. When you contact us, we may require you to submit a written report fully describing the incident.

Subpart 3265—Inspection, Enforcement, and Noncompliance for Drilling Operations

§ 3265.10 What part of my drilling operations may BLM inspect?

(a) BLM may inspect all of your Federal drilling operations regardless of surface ownership. We will inspect your operations for compliance with the requirements of § 3200.4.

(b) BLM may inspect all of your maps, well logs, surveys, records, books, and accounts related to your Federal drilling operations.

§ 3265.11 What records must I keep available for inspection?

You must keep a complete record of all aspects of your activities related to your drilling operation available for our inspection. Store these records in a place which makes them conveniently available to us. Examples of records which we may inspect include:

(a) Well logs and maps;

(b) Records, books, and accounts related to your Federal drilling operations;

(c) Directional surveys;

(d) Records pertaining to casing type and setting;

(e) Records pertaining to formations penetrated;

(f) Well test results;

(g) Records pertaining to characteristics of the geothermal resource;

(h) Records pertaining to emergency procedure training; and

(i) Records pertaining to operational problems.

§ 3265.12 What will BLM do if my operations do not comply with my permit and applicable regulations?

(a) We will issue you a written Incident of Noncompliance, directing you to take required corrective action within a specific time period. If the noncompliance continues or is of a serious nature, we will take one or more of the following actions:

(1) Enter your lease, and correct any deficiencies at your expense;

(2) Collect all or part of your bond;

(3) Direct modification or shutdown of your operations; and

(4) Take other enforcement action under subpart 3213 against a lessee who is ultimately responsible for noncompliance.

(b) Noncompliance may result in BLM terminating your lease. See §§ 3213.17 through 3213.19.

Subpart 3266—Confidential, Proprietary Information

§ 3266.10 Will BLM disclose information I submit under these regulations?

All Federal and Indian data and information submitted to the BLM are subject to part 2 of this title. Part 2 includes the Department of the Interior regulations covering public disclosure of data and information contained in Department records. Certain mineral information not protected from disclosure under part 2 of this title may be made available for inspection without a Freedom of Information Act (FOIA) request. BLM will not treat surface location, surface elevation, or well status information as confidential.

§ 3266.11 When I submit confidential, proprietary information, how can I help ensure that it is not available to the public?

When you submit data and information that you believe to be exempt from disclosure by part 2 of this title, you must clearly mark each page that you believe contains confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

§ 3266.12 How long will information that I give BLM remain confidential or proprietary?

The FOIA does not provide a finite period of time during which information may be exempt from public disclosure. BLM reviews each situation individually and in accordance with part 2 of this title.

Subpart 3267—Geothermal Drilling Operations Relief and Appeals

§ 3267.10 How do I request a variance from BLM requirements that apply to my drilling operations?

(a) You may file a request for a variance from the requirements of § 3200.4 for your approved drilling operations. Your request must include enough information to explain:

(1) Why you cannot comply with the requirements of § 3200.4; and

(2) Why you need the variance to control your well, conserve natural resources, or protect public health and safety, property, or the environment.

(b) We may approve your request orally or in writing. If BLM gives you an oral approval, we will follow up with written confirmation.

§ 3267.11 How may I appeal a BLM decision regarding my drilling operations?

You may appeal our decisions regarding your drilling operations in accordance with § 3200.5.

Subpart 3270—Utilization of Geothermal Resources—General

§ 3270.10 What types of geothermal operations are governed by these utilization regulations?

(a) The regulations in subparts 3270 through 3279 of this part cover the permitting and operating procedures for the utilization of geothermal resources. This includes:

(1) Electrical generation facilities;

(2) Direct use facilities;

(3) Related utilization facility operations;

(4) Actual and allocated well field production and injection; and

(5) Related well field operations.

(b) The utilization regulations in subparts 3270 through 3279 do not address conducting exploration operations, which is covered in subpart 3250, or drilling wells intended for production or injection, which is covered in subpart 3260.

§ 3270.11 What general standards apply to my utilization operations?

Your utilization operations must:

(a) Meet all operational and environmental standards;

(b) Prevent unnecessary impacts on surface and subsurface resources;

(c) Result in the maximum ultimate recovery of geothermal resources;

(d) Result in the beneficial use of geothermal resources, with minimum waste;

(e) Protect public health, safety, and property; and

(f) Comply with the requirements of § 3200.4.

§ 3270.12 What other orders or instructions may BLM issue?

BLM may issue:

(a) Geothermal resource operational orders, for detailed requirements that apply nationwide;

(b) Notices to lessees, for detailed requirements on a statewide or regional basis;

(c) Other orders and instructions specific to a field or area;

(d) Permit conditions of approval; and

(e) Oral orders, which BLM will confirm in writing.

Subpart 3271—Utilization Operations: Getting a Permit

§ 3271.10 What do I need to start preparing a site and building and testing a utilization facility on Federal land leased for geothermal resources?

In order to use Federal land to produce geothermal power, you must obtain a site license and construction permit from BLM before you start preparing the site. Send BLM a plan that shows what you want to do, and draft a proposed site license agreement that you think is fair and reasonable. We will review your proposal and decide whether to give you a permit and license to proceed with work on the site.

§ 3271.11 Who may apply for a permit to build a utilization facility?

The lessee, the facility operator, or the unit operator may apply to build a utilization facility.

§ 3271.12 What do I need to start preliminary site investigations that may disturb the surface?

(a) You must:

(1) Fully describe your proposed operations in a Sundry Notice; and

(2) File a bond meeting the requirements of either § 3251.14 or § 3273.19. See subparts 3214 and 3215 for additional details on bonding procedures.

(b) Do not begin the site investigation or surface disturbing activity until BLM approves your Sundry Notice and bond.

§ 3271.13 How do I obtain approval to build pipelines and facilities connecting the well field to utilization facilities not located on Federal lands leased for geothermal resources?

Before constructing pipelines and well field facilities on Federal lands leased for geothermal resources, you as lessee, unit operator, or facility operator must submit to BLM a utilization plan and facility construction permit addressing any pipelines or facilities. Do not start construction of your pipelines or facilities until BLM approves your facility construction permit.

§ 3271.14 What do I need to do to start building and testing a utilization facility if it is not located on Federal lands leased for geothermal resources?

(a) You do not need a BLM permit to construct a facility located on either:

(1) Private land; or

(2) Lands where the surface is privately owned and BLM has leased the underlying Federal geothermal resources, when the facility will utilize Federal geothermal resources.

(b) Before testing a utilization facility that is not located on Federal lands leased for geothermal resources, send us a Sundry Notice describing the testing schedule and the quantity of Federal geothermal resources you expect to be delivered to the facility during the testing. Do not start delivering Federal geothermal resources to the facility until we approve your Sundry Notice.

§ 3271.15 How do I get a permit to begin commercial operations?

Before using Federal geothermal resources, you as lessee, operator, or facility operator must send us a completed commercial use permit (see § 3274.11). This also applies when you use Federal resources allocated through any form of agreement. Do not start any commercial use operations until BLM approves your commercial use permit.

Subpart 3272—Utilization Plans and Facility Construction Permits

§ 3272.10 What must I submit to BLM in my utilization plan?

Submit to BLM an application describing:

(a) The proposed facilities as required by § 3272.11; and

(b) The anticipated environmental impacts and how you propose to mitigate those impacts, as required by § 3272.12.

§ 3272.11 How do I describe the proposed utilization facility?

Your submission must include:

(a) A generalized description of all proposed structures and facilities, including their size, location, and function;

(b) A generalized description of proposed facility operations, including estimated total production and injection rates; estimated well flow rates, pressures, and temperatures; facility net and gross electrical generation; and, if applicable, interconnection with other utilization facilities. If it is a direct use facility, send us the information we need to determine the amount of resource utilized;

(c) A contour map of the entire utilization site, showing production and injection well pads, pipeline routes, facility locations, drainage structures, existing and planned access, and lateral roads;

(d) A description of site preparation and associated surface disturbance, including the source for site or road building materials, amounts of cut and fill, drainage structures, analysis of all site evaluation studies prepared for the site(s), and a description of any additional tests, studies, or surveys which are planned to assess the geologic suitability of the site(s);

(e) The source, quality, and proposed consumption rate of water to be used during facility operations, and the source and quantity of water to be used during facility construction;

(f) The methods for meeting air quality standards during facility construction and operation, especially standards concerning non-condensable gases;

(g) An estimated number of personnel needed during construction and operation of the facility;

(h) A construction schedule;

(i) A schedule for testing of the facility and/or well equipment, and for the start of commercial operations;

(j) A description of architectural landscaping or other measures to minimize visual impacts; and

(k) Any additional information or data that we may require.

§ 3272.12 What environmental protection measures must I include in my utilization plan?

(a) Describe, at a minimum, your proposed measures to:

(1) Prevent or control fires;

(2) Prevent soil erosion;

(3) Protect surface or ground water;

(4) Protect fish and wildlife;

(5) Protect cultural, visual, and other natural resources;

(6) Minimize air and noise pollution; and

(7) Minimize hazards to public health and safety during normal operations.

(b) If BLM requires it, you must also describe how you will monitor your facility operations to ensure that they comply with the requirements of § 3200.4, and applicable noise, air, and water quality standards, at all times. We will consult with other involved surface management agencies, if any, regarding

monitoring requirements. You must also include provisions for monitoring other environmental parameters we may require.

(c) Based on what level of impacts that BLM finds your operations may cause, we may require you to collect data concerning existing air and water quality, noise, seismicity, subsidence, ecological systems, or other environmental information for up to 1 year before you begin operating. BLM must approve your data collection methodologies, and will consult with any other surface managing agencies involved.

(d) You must also describe how you will abandon utilization facilities and restore the site, in order to comply with the requirements of § 3200.4.

(e) Finally, you must submit any additional information or data that BLM may require.

§ 3272.13 How will BLM review my utilization plan and notify me of its decision?

(a) When BLM receives your utilization plan, we will make sure it is complete and review it for compliance with § 3200.4.

(b) If another Federal agency manages the surface of your lease, we will consult with that agency as part of the plan review.

(c) If we need any further information to complete our review, we will contact you in writing and suspend our review until we receive the information.

(d) We will notify you in writing of our decision on your plan.

§ 3272.14 How do I get a permit to build or test my facility?

(a) Before building or testing a utilization facility, you must submit to BLM a:

(1) Utilization plan;

(2) Completed and signed facility construction permit; and

(3) Completed and signed site license. (See subpart 3273.)

(b) Do not start building or testing your utilization facility until we have approved both your facility construction permit and your site license.

(c) After our review, we will notify you whether we have approved or denied your permit, as well as of any conditions we require for conducting operations.

Subpart 3273—How To Apply for a Site License

§ 3273.10 When do I need a site license for a utilization facility?

You must obtain a site license approved by BLM, unless your facility will be located on lands leased as described in § 3273.11. Do not start building or testing your utilization facility on public lands leased for geothermal resources until BLM has approved both your facility construction permit (see § 3272.14) and your site license. The facility operator must apply for the license.

§ 3273.11 When is a site license unnecessary?

You do not need a site license if your facility will be located:

(a) On private land or on split estate land where the United States does not own the surface; or

(b) On Federal land not leased for geothermal resources. In this situation, the Federal surface management agency will issue you the permit you need.

§ 3273.12 How will BLM review my site license application?

(a) When BLM receives your site license application, we will make sure it is complete. If we need more information for our review, we will ask you for that information and stop our review until we receive the information.

(b) If your site license is located on geothermal leases where the surface is managed by the Department of Agriculture, we will consult with that agency and obtain concurrence before we approve your application. The agency may require additional license terms and conditions.

(c) If the land is subject to section 24 of the Federal Power Act, we will issue the site license with the terms and conditions requested by the Federal Energy Regulatory Commission.

(d) If another Federal agency manages the surface, we will consult with them to determine if they recommend additional license terms and conditions.

(e) After our review, we will notify you whether we approved or denied your license, as well as any additional conditions we require.

§ 3273.13 What lands are not available for geothermal site licenses?

BLM will not issue site licenses under these regulations for lands that are not leased or not available for geothermal leasing (see § 3201.11).

§ 3273.14 What area does a site license cover?

A site license covers a reasonably compact tract of Federal land, limited to as much of the surface as is necessary to utilize geothermal resources. That means the site license area will only include the utilization facility itself and other necessary structures, such as substations and processing, repair, or storage facility areas.

§ 3273.15 What must I include in my site license application?

Your site license application must include:

(a) A description of the boundaries of the land applied for, as determined by a certified licensed surveyor. Describe the land by legal subdivision, section, township and range, or by approved protraction surveys, if applicable;

(b) The affected acreage;

(c) A non-refundable filing fee of $50;

(d) A site license bond (see § 3273.19);

(e) The first year's rent, if applicable (see § 3273.18); and

(f) Documentation that the lessee or unit operator accepts the siting of the facility, if the facility operator is neither the lessee nor the unit operator.

§ 3273.16 What is the annual rent for a site license?

BLM will specify the annual rent in your license and the date you must pay it, if you are required to pay rent (see § 3273.18). Your rent will be at least $100 per acre or fraction thereof for an electrical generation facility, and at least $10 per acre or fraction thereof for a direct use facility. Send the first year's rent to BLM, and all subsequent rental payments to MMS under 30 CFR part 218.

§ 3273.17 When may BLM reassess the annual rent for my site license?

BLM may reassess the rent for lands covered by the license, beginning with the 10th year and every 10 years after that.

§ 3273.18 What facility operators must pay the annual site license rent?

If you are a lessee siting a utilization facility on your own lease, or a unit operator siting a utilization facility on leases committed to the unit, you are not required to pay rent. Only a facility operator who is not also a lessee or unit operator must pay rent.

§ 3273.19 What are the bonding requirements for a site license?

(a) For an electrical generation facility, the facility operator must submit a surety or personal bond to BLM for at least $100,000 that meets the requirements of subpart 3214.BLM may increase the required bond amount. See subparts 3214 and 3215 for additional details on bonding procedures.

(b) For a direct use facility, the facility operator must submit a surety or personal bond to BLM that meets the requirements of subpart 3214 in an amount BLM will specify.

(c) The bond's terms must cover compliance with the requirements of § 3200.4.

(d) Until BLM approves your bond, do not start construction, testing, or any

other activity that would disturb the surface.

§ 3273.20 When will BLM release my bond?

We will release your bond after you request it and we determine that you have:

(a) Removed the utilization facility and all associated equipment;

(b) Reclaimed the land; and

(c) Met all the requirements of § 3200.4.

§ 3273.21 What are my obligations under the site license?

As the facility operator, you:

(a) Must comply with the requirements of § 3200.4;

(b) Are liable for all damages to the lands, property, or resources of the United States caused by yourself, your employees, or your contractors or their employees;

(c) Must indemnify the United States against any liability for damages or injury to persons or property arising from the occupancy or use of the lands authorized under the site license; and

(d) Must restore any disturbed surface, and remove all structures when they are no longer needed for facility construction or operation. This includes the utilization facility if you cannot operate the facility and you are not diligent in your efforts to return the facility to operation.

§ 3273.22 How long will my site license remain in effect?

(a) The primary term of a site license is 30 years, with a preferential right to renew the license under terms and conditions set by BLM.

(b) If your lease on which the licensed site is located ends, you may apply for a facility permit under Section 501 of FLPMA, 43 U.S.C. 1761, if your facility is on BLM-managed lands. Otherwise, you must get permission from the surface management agency to continue using the surface for your facility.

§ 3273.23 May I renew my site license?

(a) You have a preferential right to renew your site license under terms and conditions BLM determines.

(b) If your site license is located on leased lands managed by the Department of Agriculture, we will consult with the surface management agency and obtain concurrence before renewing your license. The agency may require additional license terms and conditions. If another Federal agency manages the surface, we will consult with them before granting your renewal.

§ 3273.24 When may BLM terminate my site license?

(a) BLM may terminate a site license by written order. We may terminate your site license if you:

(1) Do not comply with the requirements of § 3270.11; or

(2) Do not comply with the requirements of § 3200.4.

(b) To prevent termination, you must correct the violation within 30 days after you receive a correction order from BLM, unless we determine that:

(1) The violation cannot be corrected within 30 days; and

(2) You are diligently attempting to correct it.

§ 3273.25 When may I relinquish my site license?

You may request approval to relinquish your site license by sending BLM a written notice requesting relinquishment review and approval. We will not approve the relinquishment until you comply with § 3273.21.

§ 3273.26 When may I assign or transfer my site license?

You may assign or transfer your site license in whole or in part. Send BLM your completed and signed transfer application and a $50 filing fee. Your application must include a written statement that the transferee will comply with all license terms and conditions, and that the lessee accepts the transfer. The transferee must submit a bond meeting the requirements of § 3273.19. The transfer is not effective until we approve the bond and site license transfer.

Subpart 3274—Applying for and Obtaining a Commercial Use Permit

§ 3274.10 Do I need a commercial use permit to start commercial operations?

You must have a commercial use permit approved by BLM before you begin commercial operations from a Federal lease, a Federal unit, or a utilization facility.

§ 3274.11 What must I give BLM to approve my commercial use permit application?

Submit a completed and signed commercial permit form, to BLM, containing the following information:

(a) The design specifications, and the inspection and calibration schedule of production, injection, and royalty meters;

(b) A schematic diagram of the utilization site or individual well, showing the location of each production and royalty meter. If the sales point is located off the utilization site, give us a generalized schematic diagram of the electrical transmission or pipeline system, including meter locations;

(c) A copy of the sales contract for the sale and/or utilization of geothermal resources;

(d) A description and analysis of reservoir, production, and injection characteristics, including the flow rates, temperatures, and pressures of each production and injection well;

(e) A schematic diagram of each production and injection well showing the wellhead configuration, including meters;

(f) A schematic flow diagram of the utilization facility, including interconnections with other facilities, if applicable;

(g) A description of the utilization process in sufficient detail to enable BLM to determine whether the resource will be utilized in a manner consistent with law and regulations;

(h) The planned safety provisions for emergency shutdown to protect public health, safety, property, and the environment. This should include a schedule for the testing and maintenance of safety devices;

(i) The environmental and operational parameters that will be monitored during the operation of the facility and/or well(s); and

(j) Any additional information or data that we may require.

§ 3274.12 How will BLM review my commercial use permit application?

(a) When BLM receives your completed and signed commercial use permit application, we will make sure it is complete and review it for compliance with § 3200.4.

(b) If another Federal agency manages the surface of your lease, we will consult with that agency before we approve your commercial use permit.

(c) We will review your commercial use permit to make sure it conforms with your utilization plan and any mitigation measures we developed while reviewing your plan.

(d) We will check your commercial use permit for technical adequacy, and will ensure that your meters meet the accuracy standards (see § § 3275.14 and 3275.15).

(e) If we need any further information to complete our review, we will contact you in writing and suspend our review until we receive the information.

(f) After our review, we will notify you whether your permit has been approved or denied, as well as any conditions of approval.

§ 3274.13 May I get a permit even if I cannot currently demonstrate I can operate within required standards?

Yes, but we may limit your operations to a prescribed set of activities and a set period of time, during which we will give you a chance to show you can operate within environmental and operational standards, based on actual facility and well data you collect. Send us a Sundry Notice to get BLM approval for extending your permit. If during this set time period you still cannot demonstrate your ability to operate within the required standards, we will terminate your authorization. You must then stop all operations and restore the surface to the standards we set in the termination notice.

Subpart 3275—Conducting Utilization Operations

§ 3275.10 How do I change my operations if I have an approved facility construction or commercial use permit?

Send BLM a completed and signed Sundry Notice describing your proposed change. Until we approve your Sundry Notice, you must continue to comply with the original permit terms.

§ 3275.11 What are a facility operator's obligations?

You must:

(a) Keep the facility in proper operating condition at all times by;

(1) Conducting training during your operation to ensure that your personnel are capable of performing emergency procedures quickly and effectively;

(2) Using properly maintained equipment; and

(3) Using operational practices that allow for quick and effective emergency response.

(b) Base the design of the utilization facility siting and operation on sound engineering principles and other pertinent geologic and engineering data;

(c) Prevent waste of, or damage to, geothermal and other energy and minerals resources; and

(d) Comply with the requirements of § 3200.4.

§ 3275.12 What environmental and safety requirements apply to facility operations?

(a) You must perform all utilization facility operations in a manner that:

(1) Protects the quality of surface and subsurface waters, air, and other natural resources, including wildlife, soil, vegetation, and natural history;

(2) Prevents unnecessary or undue degradation of the lands;

(3) Protects the quality of cultural, scenic, and recreational resources;

(4) Accommodates other land uses as much as possible;

(5) Minimizes noise;

(6) Prevents injury; and

(7) Prevents damage to property.

(b) You must monitor facility operations to identify and address local environmental resources and concerns associated with your facility or lease operations.

(c) You must remove or, with BLM approval, properly store all equipment and materials not in use.

(d) You must properly abandon the facility and reclaim any disturbed surface to standards approved or prescribed by us, when the land is no longer needed for facility construction or operation.

(e) When we require, you must submit a contingency plan describing procedures to protect public health and safety, property, and the environment.

(f) You must comply with the requirements of § 3200.4.

§ 3275.13 How must the facility operator measure the geothermal resources?

The facility operator must:

(a) Measure all production, injection and utilization in accordance with methods and standards approved by BLM (see § 3275.15);

(b) Maintain and test all metering equipment. If your equipment is defective or out of tolerance, you must promptly recalibrate, repair, or replace it; and

(c) Determine the amount of production and/or utilization in accordance with methods and procedures approved by BLM (see § 3275.17).

§ 3275.14 What aspects of my geothermal operations must I measure?

(a) For all well operations, you must measure wellhead flow, wellhead temperature, and wellhead pressure.

(b) For all electrical generation facilities, you must measure:

(1) Steam and/or hot water flow entering the facility;

(2) Temperature of the water and/or steam entering the facility;

(3) Pressure of the water and/or steam entering the facility;

(4) Gross electricity generated;

(5) Net electricity at the facility tailgate;

(6) Electricity delivered to the sales point; and

(7) Temperature of the steam and/or hot water exiting the facility.

(c) For direct use facilities, you must measure:

(1) Flow of steam and/or hot water; and

(2) Temperature of the steam or water entering the facility.

(d) We may also require additional measurements, depending on the type of facility, the type and quality of the resource, and the terms of the sales contract.

§ 3275.15 How accurately must I measure my production and utilization?

It depends on whether you use a meter to calculate Federal production or royalty, and what quantity of resource you are measuring.

(a) For meters that you use to calculate Federal royalty:

(1) If the meter measures electricity, it must have an accuracy of <plus-minus≤0.25% or better of reading;

(2) If the meter measures steam flowing at more than 100,000 lbs/hr on a monthly basis, it must have an accuracy reading of <plus-minus≤2 percent or better;

(3) If the meter measures steam flowing at less than 100,000 lbs/hr on a monthly basis, it must have an accuracy reading of <plus-minus≤4 percent or better;

(4) If the meter measures water flowing at more than 500,000 lbs/hr on a monthly basis, it must have an accuracy reading of <plus-minus≤2 percent or better;

(5) If the meter measures water flowing at 500,000 lbs/hr or less on a monthly basis, it must have an accuracy reading of <plus-minus≤4 percent or better;

(6) If the meter measures heat content, it must have an accuracy reading of <plus-minus≤4 percent, or better; or

(7) If the meter measures two-phase flow at any rate, BLM will determine and inform you of the meter accuracy requirements. You must obtain our prior written approval before installing and using meters for two-phase flow.

(b) Any meters that you do not use to calculate Federal royalty are considered production meters, which must maintain an accuracy of <plus-minus≤5 percent or better.

(c) We may modify these requirements as necessary to protect the interests of the United States.

§ 3275.16 What standards apply to installing and maintaining meters?

(a) You must install and maintain all meters that we require, either according to the manufacturer's recommendations and specifications or paragraphs (b) through (e) of this section, whichever are more restrictive.

(b) If you use an orifice plate to calculate Federal royalty, the orifice plate installation must comply with ''API Manual of Petroleum Measurement Standards, Chapter 14, Section 3, Part 2, Fourth Edition, April 2000.''

(c) For meters used to calculate Federal royalty, you must calibrate the meter against a known standard as follows:

(1) You must annually calibrate meters measuring electricity;

(2) You must calibrate meters measuring steam or hot water flow with a turbine, vortex, ultrasonics, or other linear devices, every 6 months, or as recommended by the manufacturer, whichever is more frequent; and

(3) You must calibrate meters measuring steam or hot water flow with an orifice plate, venturi, pitot tube, or other differential device, every month, and you must inspect and repair the primary device (orifice plate, venturi, pitot tube) annually.

(d) You must use calibration equipment that is more accurate than the equipment you are calibrating.

(e) BLM may modify any of these requirements as necessary to protect the resources of the United States.

§ 3275.17 What must I do if I find an error in a meter?

(a) If you find an error in a meter used to calculate Federal royalty, you must correct the error immediately and notify BLM by the next working day of its discovery.

(b) If the meter is not used to calculate Federal royalty, you must correct the error and notify us within 3 working days after its discovery.

(c) If correcting the error will cause a change in the sales quantity of more than 2 percent for the month(s) in which the error occurred, you must adjust the sales quantity for that month(s) and submit an amended facility report to us within 3 working days.

§ 3275.18 May BLM require me to test for byproducts associated with geothermal resource production?

You must conduct any tests we require, including tests for byproducts, if we find it necessary to require such tests for a given operation.

§ 3275.19 How do I apply to commingle production?

To request approval to commingle production, send us a completed and signed Sundry Notice. We will review your request to commingle production from wells on your lease with production from your other leases or from leases where you do not have an interest. Do not commingle production until we have approved your Sundry Notice.

§ 3275.20 What will BLM do if I waste geothermal resources?

We will determine the amount of any resources you have lost through waste. If you did not take all reasonable precautions to prevent waste, we will require you to pay compensation based on the value of the lost production. If BLM finds that you have not adequately corrected the situation, we will follow the noncompliance procedures in § 3277.12.

§ 3275.21 May BLM order me to drill and produce wells on my lease?

BLM may order you to drill and produce wells on your lease when we find it necessary to protect Federal interests, prevent drainage, or ensure that lease development and production occur in accordance with sound operating practices.

Subpart 3276—Reports: Utilization Operations

§ 3276.10 What are the reporting requirements for facility and lease operations involving Federal geothermal resources?

(a) When you begin commercial production and operation, you must notify BLM in writing within 5 business days.

(b) Submit completed and signed monthly reports thereafter to BLM as follows:

(1) If you are a lessee or unit operator supplying Federal geothermal resources to a utilization facility on Federal land leased for geothermal resources, submit a monthly report of well operations for all wells on your lease or unit;

(2) If you are the operator of a utilization facility on Federal land leased for geothermal resources, submit a monthly report of facility operations;

(3) If you are both a lessee or unit operator and the operator of a utilization facility on Federal land leased for geothermal resources, you may combine the requirements of paragraphs (b)(1) and (b)(2) of this section into one report; or

(4) If you are a lessee or unit operator supplying Federal geothermal resources to a utilization facility not located on Federal land leased for geothermal resources, and the sales point for the resource utilized is at the facility tailgate, submit all the requirements of paragraphs (b)(1) and (b)(2) of this section. You may combine these into one report.

(c) Unless BLM grants a variance, your reports must be received by BLM by the end of the month following the month that the report covers. For example, the report covering the month of July is due by August 31.

§ 3276.11 What information must I include for each well in the monthly report of well operations?

(a) Any drilling operations or changes made to a well;

(b) Total production or injection in thousands of pounds (klbs);

(c) Production or injection temperature in degrees Fahrenheit (deg. F);

(d) Production or injection pressure in pounds per square inch (psi). You must also specify whether this is gauge pressure (psig) or absolute pressure (psia);

(e) The number of days the well was producing or injecting;

(f) The well status at the end of the month;

(g) The amount of steam or hot water lost to venting or leakage, if the amount is greater than 0.5 percent of total lease production. We may modify this standard by a written order describing the change;

(h) The lease number or unit name where the well is located;

(i) The month and year to which the report applies;

(j) Your name, title, signature, and a phone number where BLM may contact you; and

(k) Any other information that we may require.

§ 3276.12 What information must I give BLM in the monthly report for facility operations?

(a) For all electrical generation facilities, include in your monthly report of facility operations:

(1) Mass of steam and/or hot water, in klbs, used or brought into the facility. For facilities using both steam and hot water, you must report the mass of each;

(2) The temperature of the steam or hot water in deg. F;

(3) The pressure of the steam or hot water in psi. You must also specify whether this is psig or psia;

(4) Gross generation in kilowatt hours (kwh);

(5) Net generation at the tailgate of the facility in kwh;

(6) Temperature in deg. F and volume of the steam or hot water exiting the facility;

(7) The number of hours the plant was on line;

(8) A brief description of any outages; and

(9) Any other information we may require.

(b) For electrical generation facilities where Federal royalty is based on the sale of electricity to a utility, in addition to the information required under paragraph (a) of this section, you must include the following information in your monthly report of facility operations:

(1) Amount of electricity delivered to the sales point in kwh, if the sales point is different from the tailgate of the facility;

(2) Amount of electricity lost to transmission;

(3) A report from the utility purchasing the electricity documenting

the total number of kwh delivered to the sales point during the month, or monthly reporting period if it is not a calendar month, and the number of kwh delivered during diurnal and seasonal pricing periods; and

(4) Any other information we may require.

§ 3276.13 What additional information must I give BLM in the monthly report for flash and dry steam facilities?

In addition to the regular monthly report information required by § 3276.12, send to BLM:

(a) Steam flow into the turbine in klbs; for dual flash facilities, you must separate the steam flow into high pressure steam and low pressure steam;

(b) Condenser pressure in psia;

(c) Condenser temperature in deg. F;

(d) Auxiliary steam flow used for gas ejectors, steam seals, pumps, etc., in klbs;

(e) Flow of condensate out of the plant (after the cooling towers) in klbs; and

(f) Any other information we may require.

§ 3276.14 What information must I give BLM in the monthly report for direct use facilities?

(a) Total monthly flow through the facility in thousands of gallons (kgal) or klbs;

(b) Monthly average temperature in, in deg. F;

(c) Number of hours that geothermal heat was used; and

(d) Any other information we may require.

§ 3276.15 How must I notify BLM of accidents occurring at my utilization facility?

You must orally inform us of all accidents that affect operations or create environmental hazards within 24 hours after each accident. When you contact us, we may require you to submit a written report fully describing the incident.

Subpart 3277—Inspections, Enforcement, and Noncompliance

§ 3277.10 When will BLM inspect my operations?

BLM may inspect all operations to ensure compliance with the requirements of § 3200.4. You must give us access during normal operating hours to inspect all facilities utilizing Federal geothermal resources.

§ 3277.11 What records must I keep available for inspection?

(a) The operator or facility operator must keep all records and information pertaining to the operation of your utilization facility, royalty and production meters, and safety training available for BLM inspection for a period of 6 years following the time the records and information are created.

(b) This requirement also pertains to records and information from meters located off your lease or unit, when BLM needs them to determine:

(1) Resource production to a utilization facility; or

(2) The allocation of resource production to your lease or unit.

(c) Store all of these records in a place where they are conveniently available.

§ 3277.12 What will BLM do if I do not comply with all BLM requirements pertaining to utilization operations?

(a) We will issue you a written Incident of Noncompliance, directing you to take required corrective action within a specific time period. If the noncompliance continues or is serious in nature, BLM will take one or more of the following actions:

(1) Enter the lease, and correct any deficiencies at your expense;

(2) Collect all or part of your bond;

(3) Order modification or shutdown of your operations; and

(4) Take other enforcement action against a lessee who is ultimately responsible for the noncompliance.

(b) Noncompliance may result in BLM terminating your lease (see § § 3213.17 through 3213.19).

Subpart 3278—Confidential, Proprietary Information

§ 3278.10 When will BLM disclose information I submit under these regulations?

All Federal and Indian data and information submitted to BLM are subject to part 2 of this title. Part 2 includes the regulations of the Department of the Interior covering public disclosure of data and information contained in Department records. Certain mineral information not protected from disclosure under part 2 may be made available for inspection without a Freedom of Information Act (FOIA) request. Examples of information we will not treat as confidential include:

(a) Facility location;

(b) Facility generation capacity; or

(c) To whom you are selling electricity or produced resources.

§ 3278.11 When I submit confidential, proprietary information, how can I help ensure it is not available to the public?

When you submit data and information that you believe to be exempt from disclosure under part 2 of this title, you must clearly mark each page that you believe contains confidential information. BLM will keep all data and information confidential to the extent allowed by § 2.13(c) of this title.

§ 3278.12 How long will information I give BLM remain confidential or proprietary?

The FOIA does not provide a finite period of time during which information may be exempt from public disclosure. BLM will review each situation individually and in accordance with part 2 of this title.

Subpart 3279—Utilization Relief and Appeals

§ 3279.10 When may I request a variance from BLM requirements pertaining to utilization operations?

(a) You may file a request with BLM for a variance for your approved utilization operations from the requirements of § 3200.4. Your request must include enough information to explain:

(1) Why you cannot comply with the requirements; and

(2) Why you need the variance to operate your facility, conserve natural resources, or protect public health and safety, property, or the environment.

(b) We may approve your request orally or in writing. If we give you oral approval, we will follow up with written confirmation.

§ 3279.11 How may I appeal a BLM decision regarding my utilization operations?

You may appeal our decision affecting your utilization operations in accordance with § 3200.5.

■ 4. Revise part 3280 to read as follows:

PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS

Subpart 3280—Geothermal Resources Unit Agreements—General

Sec.

3280.1 What is the purpose and scope of this part?
3280.2 Definitions.
3280.3 What is BLM's general policy regarding the formation of unit agreements?
3280.4 When may BLM require Federal lessees to unitize their leases or require a Federal lessee to commit a lease to a unit?
3280.5 May BLM require the modification of lease requirements in connection with the creation and operation of a unit agreement?
3280.6 When may BLM require a unit operator to modify the rate of exploration, development, or production?
3280.7 Can BLM require an owner or lessee of lands not under Federal administration to unitize their lands or leases?

Subpart 3281—Application, Review, and Approval of a Unit Agreement

3281.1 What steps must I must follow for BLM to approve my unit agreement?
3281.2 What documents must the unit operator submit to BLM before we may designate a unit area?
3281.3 What geologic information may a unit operator use in proposing a unit area?
3281.4 What are the size and shape requirements for a unit area?
3281.5 What happens if BLM receives applications that include overlapping unit areas?
3281.6 What action will BLM take after reviewing a proposed unit area designation?
3281.7 What documents must a unit operator submit to BLM before we will approve a unit agreement?
3281.8 Must a unit operator provide working interests within the designated unit area the opportunity to join the unit?
3281.9 How does a unit operator provide documentation to BLM of lease and tract commitment status?
3281.10 How will BLM determine that I have sufficient control of the proposed unit area?
3281.11 What are the unit operator qualifications?
3281.12 Who designates the unit operator?
3281.13 Is there a format or model a unit operator must use when proposing a unit agreement?
3281.14 What minimum requirements and terms must be incorporated into the unit agreement?
3281.15 What is the minimum initial unit obligation a unit agreement must contain?
3281.16 When must a Plan of Development be submitted to BLM?
3281.17 What information must be provided in the Plan of Development?
3281.18 What action will BLM take in reviewing the Plan of Development?
3281.19 What action will BLM take on a proposed unit agreement?
3281.20 When is a unit agreement effective?

Subpart 3282—Participating Area

3282.1 What is a participating area?
3282.2 When must the unit operator have a participating area approved?
3282.3 When must the unit operator submit an application for BLM approval of a proposed initial participating area?
3282.4 What general information must the unit operator submit with a proposed participating area application?
3282.5 What technical information must the unit operator submit with a proposed participating area application?
3282.6 When must the unit operator propose to revise a participating area boundary?
3282.7 What is the effective date of an initial participating area or revision of an existing participating area?
3282.8 What are the reasons BLM would not approve a revision of the participating area boundary?
3282.9 How is production allocated within a participating area?
3282.10 When will unleased Federal lands in a participating area receive a production allocation?
3282.11 May a participating area continue if there is intermittent unit production?
3282.12 When does a participating area terminate?

Subpart 3283—Modifications to the Unit Agreement

3283.1 When may the unit operator modify the unit agreement?
3283.2 When may the unit operator revise the unit contraction provision of a unit agreement?
3283.3 How will the unit operator know the status of a unit contraction revision request?
3283.4 When may the unit operator add lands to or remove lands from a unit agreement?
3283.5 When will BLM periodically review unit agreements?
3283.6 What is the purpose of BLM's periodic review?
3283.7 When may unit operators be changed?
3283.8 What must be filed with BLM to change the unit operator?
3283.9 When is a change of unit operator effective?
3283.10 If there is a change in the unit operator, when does the previous operator's liability end?
3283.11 Do the terms and conditions of a unit agreement modify Federal lease stipulations?
3283.12 Are transferees and successors in interest of Federal geothermal leases bound by the terms and conditions of the unit agreement?

Subpart 3284—Unit Operations

3284.1 What general standards apply to operations within a unit?
3284.2 What are the principal operational responsibilities of the unit operator?
3284.3 What happens if the minimum initial unit obligations are not met?
3284.4 How are unit agreement terms affected after completion of the initial unit well?
3284.5 How do unit operations affect lease extensions?
3284.6 May BLM authorize a working interest owner to drill a well on lands committed to the unit?
3284.7 May BLM authorize operations on uncommitted Federal leases located within a unit?
3284.8 May a unit have multiple operators?
3284.9 May BLM set or modify production or injection rates?
3284.10 What must a unit operator do to prevent or compensate for drainage?
3284.11 Must the unit operator develop and operate on every lease or tract in the unit to comply with the obligations in the underlying leases or agreements?
3284.12 When must the unit operator notify BLM of any changes of lease and tract commitment status?

Subpart 3285—Unit Termination

3285.1 When may BLM terminate a unit agreement?
3285.2 When may BLM approve a voluntary termination of a unit agreement?

Subpart 3286—Model Unit Agreement

3286.1 Model Unit Agreement.

Subpart 3287—Relief and Appeals

3287.1 May the unit operator request a suspension of unit obligations or development requirements?
3287.2 When may BLM grant a suspension of unit obligations?
3287.3 How does a suspension of unit obligations affect the terms of the unit agreement?
3287.4 May a decision made by BLM under this part be appealed?

Authority: 30 U.S.C. 1001–1028 and 43 U.S.C. 1701 *et seq.*

Subpart 3280—Geothermal Resources Unit Agreements—General

§ 3280.1 What is the purpose and scope of this part?

(a) The purpose of this part is to provide holders of Federal and non-Federal geothermal leases and owners of non-Federal mineral interests the opportunity to unite under a Federal geothermal unit agreement to explore for and develop geothermal resources in a manner that is necessary or advisable in the public interest.

(b) These regulations identify:

(1) The procedures a prospective unit operator must follow to receive BLM approval for unit area designation and a Federal geothermal unit agreement;

(2) The operational requirements a unit operator must meet once the unit agreement is approved; and

(3) The procedures BLM will follow in reviewing, approving, and administering a Federal geothermal unit agreement.

§ 3280.2 Definitions.

The following terms, as used in this part or in any agreement approved under the regulations in this part, have the following meanings unless otherwise defined in such agreement:

Minimum initial unit obligation means the requirement to complete at least one unit well within the timeframe specified in the unit agreement. If this requirement is not met, BLM deems the unit void as though it was never in effect.

Participating area means that part of the unit area that BLM deems to be productive from a horizon or deposit, and to which production would be allocated in the manner described in the unit agreement, assuming that all lands are committed to the unit agreement.

Plan of development means the document a unit operator submits to BLM defining how the unit operator will diligently pursue unit exploration

and development to meet both initial and subsequent unit development and public interest obligations.

Public interest means operations within a geothermal unit resulting in:

(1) Diligent development;

(2) Efficient exploration, production and utilization of the resource;

(3) Conservation of natural resources; and

(4) Prevention of waste.

Reasonably proven to produce means a sufficient demonstration, based on scientific and technical information, that lands are contributing to unit production in commercial quantities or are providing reservoir pressure support for unit production.

Unit agreement means an agreement for the exploration, development, production, and utilization of separately owned interests in the geothermal resources made subject thereto as a single consolidated unit without regard to separate ownerships, which provides for the allocation of costs and benefits on a basis defined in the agreement or plan.

Unit area means the area described in a unit agreement as constituting the land logically subject to development under such agreement.

Unit contraction provision means a term of a unit agreement providing that the boundaries of the unit area will contract to the size of the participating area, by having those lands outside of the participating area removed. BLM will contract the unit area if additional unit wells are not drilled and completed within the timeframe specified in the unit agreement.

Unit operator means the person, association, partnership, corporation, or other business entity designated under a unit agreement to conduct operations on unitized land as specified in such agreement.

Unit well means a well that is:

(1) Designed to produce or utilize geothermal resources in commercial quantities;

(2) Drilled and completed to the bona fide geologic objective specified in the unit agreement, unless a commercial resource is found at a shallower depth; and

(3) Located on unitized land.

Unitized land means the part of a unit area committed to a unit agreement.

Unitized substances means deposits of geothermal resources recovered from unitized land by operation under and pursuant to a unit agreement.

Working interest means the interest held in geothermal resources or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in a unit agreement, the owner of such interest is vested with the right to explore for, develop, produce, and utilize such resources. The right delegated to the unit operator as such by the unit agreement is not to be regarded as a working interest.

§ 3280.3 What is BLM's general policy regarding the formation of unit agreements?

For the purpose of more properly conserving the natural resources of any geothermal reservoir, field, or like area, or any part thereof, lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the reservoir, field, or like area, or any part thereof, including direct use resources, if BLM determines and certifies this to be necessary or advisable in the public interest.

§ 3280.4 When may BLM require Federal lessees to unitize their leases or require a Federal lessee to commit a lease to a unit?

(a) BLM may initiate the formation of a unit agreement, or require an existing Federal lease to commit to a unit agreement, if in the public interest.

(b) BLM may require that Federal leases that become effective on or after August 8, 2005, contain a provision stating that BLM may require commitment of the lease to a unit agreement, and may prescribe the unit agreement to which such lease must commit to protect the rights of all parties in interest, including the United States.

§ 3280.5 May BLM require the modification of lease requirements in connection with the creation and operation of a unit agreement?

(a) BLM may, with the consent of the lessees involved, establish, alter, change, or revoke rates of operations (including drilling, operations, production, and other requirements) of the leases, and make conditions with respect to the leases, in connection with the creation and operation of any such unit agreement as BLM may consider necessary or advisable to secure the protection of the public interest.

(b) If leases to be included in a unit have unlike lease terms, such leases need not be modified to be in the same unit.

§ 3280.6 When may BLM require a unit operator to modify the rate of exploration, development, or production?

BLM may require a unit agreement applying to lands owned by the United States to contain a provision under which BLM or an entity designated in the unit agreement may alter or modify, from time-to-time, the rate of resource exploration or development, or production quantity or rate, under the unit agreement.

§ 3280.7 Can BLM require an owner or lessee of lands not under Federal administration to unitize their lands or leases?

BLM cannot require the commitment of lands or leases not under Federal administration or jurisdiction to a Federal unit.

Subpart 3281—Application, Review, and Approval of a Unit Agreement

§ 3281.1 What steps must I follow for BLM to approve my unit agreement?

Before a unit agreement becomes effective, BLM must designate the unit area and approve the unit agreement. Procedures for designating the unit area are set forth in § § 3281.2 through 3281.6. Procedures for approving the unit agreement are set forth in § § 3281.7 through 3281.17.

§ 3281.2 What documents must the unit operator submit to BLM before we may designate a unit area?

(a) The unit operator must submit the following documents before BLM may designate a proposed unit area:

(1) A report detailing the geologic information and interpretation that indicates, to the satisfaction of BLM, the proposed area is geologically appropriate for unitization;

(2) A map showing:

(i) The proposed unit area;

(ii) All leases (including Federal, state, or private) and tracts (unleased privately owned land or mineral rights);

(iii) The Federal lease number and lessee; and

(iv) An individual unit tract number;

(3) A list which includes the following information as to each Federal, state, and private lease, and tracts of unleased land, to be included in the unit:

(i) The lease number;

(ii) The legal land description of each lease and tract;

(iii) The acreage of each lease or tract;

(iv) The lessor and lessee of each lease;

(v) The mineral rights owner of any unleased tract; and

(vi) The total number of acres:

(A) In the unit area;

(B) Under Federal administration; and

(C) In private or other (such as state) ownership; and

(4) Any other information BLM may require.

(b) Before submitting any documents, ask BLM how many copies are required.

§ 3281.3 What geologic information may a unit operator use in proposing a unit area?

(a) A unit operator may use any reasonable geologic information necessary to justify its proposed unit area. The information must document that the proposed unit area is:

(1) Geologically contiguous; and

(2) Suitable for resource exploration, development and production under a unit agreement.

(b) BLM will decide which information and interpretations are acceptable. BLM's acceptance of the information and interpretations may vary depending on the types and level of geologic information available for the area.

§ 3281.4 What are the size and shape requirements for a unit area?

There are no specific size or shape requirements for a unit area, except that it must meet the requirements of § 3281.3. The size of the unit area may affect the minimum initial unit obligation requirements (see § 3281.15(b)).

§ 3281.5 What happens if BLM receives applications that include overlapping unit areas?

(a) If BLM receives unit area applications that include overlapping lands, we will request that each prospective unit operator resolve the issue with the other operator(s). If the prospective operators cannot reach a resolution, BLM may:

(1) Return all unit applications and request all applicants to revise their proposed unit areas;

(2) Designate any unit area proposal that is geologically appropriate for unitization and best meets public interest requirements; or

(3) Designate a different area for unitization when doing so is in the public interest.

(b) BLM will reject either an application or a portion of an application that includes lands already in an approved unit area.

§ 3281.6 What action will BLM take after reviewing a proposed unit area designation?

(a) BLM will approve the unit area designation in writing and notify the prospective unit operator once we determine that:

(1) We have received the information required at § 3281.2;

(2) Information available to BLM documents that the area is geologically appropriate for unitization; and

(3) Unitization is appropriate to conserve the natural resources of a geothermal reservoir, field, or like area, or part thereof.

(b) BLM will notify a prospective unit operator in writing if we do not designate a proposed unit area.

§ 3281.7 What documents must a unit operator submit to BLM before we will approve a unit agreement?

After BLM approves a unit area designation, a unit operator must submit the following information in order for BLM to approve a unit agreement:

(a) Documentation of tract commitment (see § § 3281.8 and 3281.9);

(b) The unit agreement (see § 3281.15);

(c) The map required by § 3281.2(a)(2), if any modifications have occurred since the unit area was designated;

(d) The list required by § 3281.2(a)(3) indicating whether each lease or tract is committed to the unit agreement; and

(e) The plan of development.

§ 3281.8 Must a unit operator provide working interests within the designated unit area the opportunity to join the unit?

After BLM designates a unit area, the unit operator must invite all owners of mineral rights (leased or unleased) and lease interests (record title and operating rights) in the designated unit area to join the unit. The unit operator must provide the lease interests and mineral rights owners 30 days to respond. If an interest or owner does not respond, the unit operator must provide BLM with written evidence that all the interests or owners were invited to join the unit. BLM will not approve a unit agreement proposal if this evidence is not submitted.

§ 3281.9 How does a unit operator provide documentation to BLM of lease and tract commitment status?

(a) The unit operator must provide documentation to BLM of the commitment status of each lease and tract in the designated unit area. The documentation must include a joinder or other comparable document signed by the lessee or mineral rights owner, or evidence that an opportunity to join was offered and no response was received (see § 3281.8).

(b) A majority interest of owners of any single Federal lease has authority to commit the lease to a unit agreement.

§ 3281.10 How will BLM determine that I have sufficient control of the proposed unit area?

(a) BLM will determine whether:

(1) A unit operator has sufficient control of the proposed unit area by reviewing the number and location of leases and tracts committed and their geologic potential for development in relation to the entire proposed unit area; and

(2) The committed tracts provide the unit operator with sufficient control of the unit area to conduct resource exploration and development in the public interest.

(b) If BLM determines that the unit operator does not have sufficient control of the unit area, we will not approve the unit agreement.

§ 3281.11 What are the unit operator qualifications?

(a) Before BLM will approve a unit agreement, the unit operator must:

(1) Meet the same qualifications as a lessee (see § 3202.10 of this chapter); and

(2) Demonstrate sufficient control of the unit area (see § 3281.10).

(b) A unit operator is not required to have an interest in any lease committed to the unit agreement.

§ 3281.12 Who designates the unit operator?

The owners of geothermal rights and lease interests committed to the unit agreement will nominate a unit operator. Before designating the unit operator, BLM must also determine whether the prospective unit operator meets the requirements of § 3281.11.

§ 3281.13 Is there a format or model a unit operator must use when proposing a unit agreement?

When proposing a unit agreement, submit to BLM:

(a) The model unit agreement (see § 3286.1);

(b) The model unit agreement with variances noted; or

(c) Any unit agreement format that contains all the terms and conditions BLM requires (see § § 3281.14 and 3281.15).

§ 3281.14 What minimum requirements and terms must be incorporated into the unit agreement?

(a) The unit agreement must, at a minimum:

(1) State who the unit operator is, and that the unit operator and participating lessees accept the unit terms and obligations set forth in the agreement and applicable BLM regulations;

(2) State the size and general location of the unit area;

(3) Include procedures for revising the unit area or participating area(s);

(4) Include procedures for amending the unit agreement;

(5) State the effective date and term of the unit, as provided in paragraph (b) of this section;

(6) Incorporate the minimum initial unit obligations, as specified in § 3281.15;

(7) State that BLM may require a modification of the rate of resource

exploration or development, or the production quantity or rate, within the unit area;

(8) State that the agreement is subject to periodic BLM review;

(9) State that BLM will deem the unit agreement as void as if it were never in effect if the minimum initial unit obligations are not met;

(10) Include a plan of development; and

(11) Include a unit contraction provision.

(b) The unit agreement must provide that it terminates 5 years after its effective date unless:

(1) BLM extends such date of expiration;

(2) Unitized substances are produced or utilized in commercial quantities in which event the agreement continues for so long as unitized substances are produced or utilized in commercial quantities; or

(3) BLM terminates the agreement under subpart 3285 of this part before the end of the 5 year period.

(c) The agreement may include any other provisions or terms that BLM and the unit operator agree are necessary for proper resource exploration and development, and management of the unit area.

§ 3281.15 What is the minimum initial unit obligation a unit agreement must contain?

(a) The unit agreement must:

(1) Require the unit operator to drill, within the timeframe specified in the unit agreement, at least one unit well on a tract committed to the unit agreement;

(2) Specify the location and the minimum depth and/or geologic structure to which the initial unit well will be drilled; and

(3) Require the unit operator, upon completing a unit well, to provide to BLM in a timely manner the information required at § 3264.10 of this chapter.

(b) Depending on the size of the proposed unit area, BLM may require the minimum initial unit agreement obligation to include the drilling of more than one unit well.

(c) If necessary to aid in the evaluation of drilling locations, BLM and the unit operator may agree to include types of exploration operations as part of the initial unit obligation. An example of such work is drilling temperature gradient wells.

(d) BLM will not consider any work done prior to unit approval for the purpose of meeting initial unit obligations.

§ 3281.16 When must a Plan of Development be submitted to BLM?

(a) The prospective unit operator must submit an initial Plan of Development at the time the unit area is proposed for designation.

(b) Subsequent Plans of Development that were not already provided must be submitted to address future unit activities to be conducted throughout the term of the unit agreement. For example, if the Plan only addressed activities until a unit well is completed, the subsequent Plan must address activities including the drilling of additional unit wells until a producible well is completed. Once a producible well is completed, the Plan or subsequent Plan must address those activities related to utilizing the resource.

(c) There is no requirement to submit a Plan of Development once unitized resources begin commercial operation.

§ 3281.17 What information must be provided in the Plan of Development?

(a) The Plan of Development must state the types of and timeframes for activities the unit operator will conduct in diligent pursuit of unit exploration and development. The Plan may address those activities that will be conducted until the minimum initial unit obligation is met, or it may address all activities that will occur through the term of the unit agreement.

(b) The Plan of Development may specify that the activities will be conducted in phases during the term of the unit agreement. For example, the number, location, and depth of temperature gradient wells, and the timeframe for the completion of these wells, may be the first phase. A second phase may include drilling of observation or slim-hole wells to a greater depth than that specified in the first phase. Completion of the unit well may be the third phase. In all cases, the Plan of Development must include the completion of at least one unit well.

§ 3281.18 What action will BLM take in reviewing the Plan of Development?

BLM will review the Plan of Development to ensure that the types of activities and the timeframes for their completion meet public interest requirements. If BLM determines that the Plan of Development does not meet these requirements, BLM will negotiate with the prospective unit operator to revise the proposed activities. BLM will not designate a unit area until the Plan of Development meets applicable requirements.

§ 3281.19 What action will BLM take on a proposed unit agreement?

BLM will:

(a) Review the proposed unit agreement to ensure that the public interest is protected and that the agreement conforms to applicable laws and regulations;

(b) Coordinate the review of a proposed unit agreement with appropriate state agencies, and other Federal surface management agencies, if applicable;

(c) Approve the unit agreement and provide the unit operator with signed copies of the agreement, if we determine:

(1) That the unit operator has submitted all required information;

(2) That the unit agreement and the unit operator satisfy all required terms and conditions, including the requirements specified at § § 3281.14 and 3281.15, and conform with all applicable laws and regulations; and

(3) That the unit agreement is necessary or advisable to meet the public interest;

(d) Notify the unit operator in writing if we reject the unit agreement proposal; and

(e) Reject any unit application that includes lands already committed to an approved unit agreement.

§ 3281.20 When is a unit agreement effective?

The effective date of the unit agreement approval is the first day of the month following the date BLM approves and signs it. The unit operator may request that the effective date be the first day of the month in which the agreement is signed by BLM, or a more appropriate date agreed to by BLM.

Subpart 3282—Participating Area

§ 3282.1 What is a participating area?

(a) A participating area is the combined portion of the unitized area which BLM determines:

(1) Is reasonably proven to produce geothermal resources; or

(2) Supports production in commercial quantities, such as pressure support from injection wells.

(b) The size and configuration of all participating areas and revisions are not effective until BLM approves them.

§ 3282.2 When must the unit operator have a participating area approved?

You must have an established BLM-approved participating area to allocate production and royalties before beginning commercial operations under a unit agreement to allocate production within the unit.

§ 3282.3 When must the unit operator submit an application for BLM approval of a proposed initial participating area?

The unit operator must submit an application for BLM approval of a proposed participating area no later than:

(a) 60 days after receiving BLM's determination identified in § 3281.15(a)(3) that a unit well will produce or utilize in commercial quantities; or

(b) 30 days before the initiation of commercial operations, whichever occurs earlier.

§ 3282.4 What general information must the unit operator submit with a proposed participating area application?

The unit operator must submit the following information with a participating area application:

(a) Technical information supporting its application (see § 3282.5);

(b) The information required in § 3281.2(a)(2) and (3) for the lands in the proposed participating area; and

(c) Any other information BLM may require.

§ 3282.5 What technical information must the unit operator submit with a proposed participating area application?

At a minimum, the unit operator must submit the following technical information with a proposed participating area application:

(a) Documentation that the participating area includes:

(1) The production and injection wells necessary for unit operations;

(2) Unit wells that are capable of being produced or utilized in commercial quantities; and

(3) The area each well drains or supplies pressure communication.

(b) Data, including logs, from production and injection well testing, if not previously submitted under § 3264.10 of this chapter;

(c) Interpretations of well performance, and reservoir geology and structure, that document that the lands are reasonably proven to produce; and

(d) Any other information BLM may require.

§ 3282.6 When must the unit operator propose to revise a participating area boundary?

(a) The unit operator must submit a written application to BLM to revise a participating area boundary no later than 60 days after receipt of the BLM determination described herein, when either:

(1) A well is completed that BLM has determined will produce or utilize in commercial quantities, and such well:

(i) Is located outside of an existing participating area; or

(ii) Drains an area outside the existing participating area; or

(2) An injection well located outside of an existing participating area is put into use that BLM has determined provides reservoir pressure support to production.

(b) The unit operator may submit a written application for a revision of a participating area when new or additional technical information or revised interpretations of any information provides a basis for revising the boundary.

(c) The unit operator may submit a written request to BLM to delay a participation area revision decision when drilling multiple wells in the unit is actively pursued or the drilling is providing additional technical information. A delay will not affect the effective date of any participation area revision (see § 3282.7). The request must include:

(1) The well locations;

(2) Anticipated spud and completion dates of each well;

(3) The timing of well testing and analyses of technical information; and

(4) The anticipated date BLM will receive the participation area revision for review.

(d) BLM will provide the unit operator with a written decision on the application to revise a participating area or the request to delay a participating area revision decision by BLM.

§ 3282.7 What is the effective date of an initial participating area or revision of an existing participating area?

(a) BLM will establish the appropriate effective date of an initial participating area or any revision to a participating area. The effective date may be, but is not limited to, the first day of the month in which:

(1) A well is completed that causes the participating area to be formed or revised;

(2) Commercial operations start; or

(3) New or additional technical information becomes known that provides a basis for revising the boundary (such as when production from, or injection to, an area outside the participating area first became known).

(b) The unit operator may request BLM to approve a specific effective date for the participating area or revision, but the date may not be earlier than the effective date of the unit.

§ 3282.8 What are the reasons BLM would not approve a revision of the participating area boundary?

BLM will not approve a revision of the participating area boundary:

(a) If the unit operator does not submit the required information;

(b) If BLM determines that the new or additional technical information does not support a boundary revision; or

(c) If it reduces the size of a participating area because of depletion of the resource.

§ 3282.9 How is production allocated within a participating area?

Allocation of production to each committed lease or tract within a participating area is in the same proportion as that lease's or tract's surface acreage within the participating area.

§ 3282.10 When will unleased Federal lands in a participating area receive a production allocation?

Unleased Federal lands within a participating area are treated as follows:

(a) For royalty purposes only, you must allocate production to unleased Federal lands in the participating area as if the acreage were committed to the participating area.

(b) The unit operator is primarily liable for paying and must pay royalty to the United States for such allocated production based on a rate not less than the highest royalty rate for any Federal lease in the participating area. In the event the unit operator does not pay any royalties owed under this paragraph, each lessee of lands committed to the participating area is responsible for paying such royalties in the same proportion as that lessee's percentage of surface acreage within the participating area, excluding the unleased acreage.

§ 3282.11 May a participating area continue if there is intermittent unit production?

A participating area may continue if there is intermittent unit production only if BLM determines that intermittent production is in the public interest. For example, a direct use facility may only require production to occur during winter months.

§ 3282.12 When does a participating area terminate?

A participating area terminates when either:

(a) The unit operator permanently stops operations in or affecting the participating area; or

(b) Sixty (60) days after BLM notifies the unit operator in writing that we have determined that operations in the participating area are not being conducted in accordance with the unit agreement, the participating area approval, or the public interest. If before the expiration of the 60 days, the unit operator demonstrates to BLM's satisfaction that the basis for BLM's determination is erroneous or has been rectified, BLM will not terminate the participating area.

Subpart 3283—Modifications to the Unit Agreement

§ 3283.1 When may the unit operator modify the unit agreement?

(a) The unit operator may propose to modify a unit agreement by submitting an application to BLM that:

(1) Identifies the proposed change and the reason for the change; and

(2) Certifies that all necessary unit interests have agreed to the change.

(b) BLM will send the unit operator written notification of BLM's decision regarding the application. Proposed modifications to a unit agreement will not become effective until BLM approves them. BLM's approval may be made effective retroactively to the date the application was complete. BLM may approve a different effective date, including a date the unit operator requests and for which the unit operator provides acceptable justification.

§ 3283.2 When may the unit operator revise the unit contraction provision of a unit agreement?

(a) The unit operator may submit to BLM a request to revise the unit contraction provision of a unit agreement, if the unit operator has either:

(1) Commenced commercial operations of unitized resources; or

(2) Completed a unit well that produces or utilizes geothermal resources in commercial quantities.

(b) The request may propose an extension of the unit contraction date and/or a partial contraction of the unit area, and must include the following information:

(1) The period for which the revision is requested; and

(2) Whether an extension of the unit contraction date and/or a partial contraction of the unit area is requested.

(c) The request should address the following factors when applicable:

(1) Economic constraints that limit the opportunity to drill and utilize the resource from additional wells;

(2) Reservoir monitoring or injection wells that BLM determines are necessary for unit operations are not located in the participating area;

(3) An inability to drill additional wells is due to circumstances beyond the unit operator's control, and a unit well that has produced or utilized in commercial quantities already is located in the unit;

(4) The types and intensity of unit operations already conducted in the unit area;

(5) The availability of viable electrical or resource sales contracts;

(6) The opportunity to utilize the resource economically; or

(7) Any other information that supports revision of the unit contraction provision.

(d) BLM will consider the factors discussed along with any other information submitted, and will approve the request if we determine that the revision is in the public interest. The approval may be subject to conditions such as requiring an annual renewal, or setting the timing and conditions for when phased contractions or termination of the revision may occur.

§ 3283.3 How will the unit operator know the status of a unit contraction revision request?

BLM will notify the unit operator in writing of our decision. If we approve the request, we:

(a) Will specify the term of the contraction extension and/or which lands will remain in the unit agreement;

(b) May require the unit operator to update the informational requirements of subpart 3282; and

(c) May terminate the participating area contraction revision if we find termination is necessary in the public interest.

§ 3283.4 When may the unit operator add lands to or remove lands from a unit agreement?

(a) The unit operator may request BLM to designate the addition or removal of lands to or from a unit agreement.

(b) In order for BLM to complete a review of the unit area revision request, the unit operator must submit to BLM the information required in § § 3281.2, 3281.3, and 3281.7.

(c) BLM will:

(1) Review the request;

(2) Determine whether the information provided is sufficient and whether the new or additional geologic information or interpretation provides an acceptable basis for the unit boundary change; and

(3) Notify the unit operator in writing of our decision.

(d) If BLM approves the revision, the unit operator must notify all owners of lease interests or mineral rights of the unit area revision.

§ 3283.5 When will BLM periodically review unit agreements?

BLM will periodically review all unit agreements to determine compliance with § 3283.6 in accordance with the following schedule:

(a) Not later than 5 years after the approval of each unit agreement; and

(b) At least every 5 years following the initial unit review.

§ 3283.6 What is the purpose of BLM's periodic review?

(a) BLM must review all unit agreements to determine whether any leases, or portions of leases, committed to any unit are no longer reasonably necessary for unit operations, and eliminate from inclusion in the unit agreement any such lands it determines not reasonably necessary for unit operations.

(b) The elimination will be based on scientific evidence, and occur only for the purpose of conserving and properly managing the geothermal resources.

(c) BLM will not eliminate any lands from a unit until BLM provides the unit operator, the lessee, and any other person with a legal interest in such lands, with reasonable notice and an opportunity to comment.

(d) Any lands eliminated from a unit under this section are eligible for a lease extension under subpart 3207 of part 3200 of this chapter if the lands meet the requirements for the extension.

§ 3283.7 When may unit operators be changed?

Unit operators may be changed only with BLM's written approval.

§ 3283.8 What must be filed with BLM to change the unit operator?

To change the unit operator, the new operator must:

(a) Meet the qualification requirements of § 3281.11;

(b) Submit to BLM evidence of acceptable bonding under § § 3214.13 of this chapter; and

(c) File with BLM written acceptance of the unit terms and obligations.

§ 3283.9 When is a change of unit operator effective?

The change is effective when BLM approves the new unit operator in writing.

§ 3283.10 If there is a change in the unit operator, when does the previous operator's liability end?

(a) The previous unit operator remains responsible for all duties and obligations of the unit agreement until BLM approves a new unit operator. The change of the unit operator does not release the previous unit operator from any liability for any obligations that accrued before the effective date of the change (see § 3215.14 of this chapter).

(b) The new unit operator is responsible for all unit duties and obligations after BLM approves the change.

§ 3283.11 Do the terms and conditions of a unit agreement modify Federal lease stipulations?

Nothing in a unit agreement modifies stipulations included in any Federal lease.

§ 3283.12 Are transferees and successors in interest of Federal geothermal leases bound by the terms and conditions of the unit agreement?

The terms and conditions of the unit agreement are binding on transferees and successors in interest to Federal geothermal leases committed to a unit agreement.

Subpart 3284—Unit Operations

§ 3284.1 What general standards apply to operations within a unit?

All unit operations must comply with:

(a) The terms and conditions of the unit agreement; and

(b) The standards and orders listed in the following chart:

Type of operation	Regulations on Operational Standards (43 CFR)	Regulations on Orders or Instructions (43 CFR)
Exploration	§ 3250.12	§ 3250.13
Drilling	§ 3260.11	§ 3260.12
Production or Utilization	§ 3270.11	§ 3270.12

§ 3284.2 What are the principal operational responsibilities of the unit operator?

The unit operator is responsible for:

(a) Diligently drilling for and developing in the public interest the geothermal resource occurring in the unit area. Only the unit operator is authorized to conduct:

(1) Any phase of drilling authorized under subpart 3260 of this chapter, unless another person is specifically authorized by BLM to conduct drilling (see § 3284.3);

(2) Resource development activities such as production and injection; and

(3) Delivery of the resource for commercial operation. An entity other than the unit operator, such as a facility operator, may purchase or utilize the resource produced from the unit.

(b) Providing written notification to BLM within 30 days after any changes to the commitment status of any lease or tract in the unit area (see § § 3281.9 and 3284.12); and

(c) Insuring that the Federal Government receives all royalties, direct use fees, and rents for activities within the participating area.

§ 3284.3 What happens if the minimum initial unit obligations are not met?

(a) If the unit operator does not drill a well designed to produce or utilize geothermal resources in commercial quantities within the timeframe specified in the unit agreement, or the unit operator relinquishes the unit agreement before meeting the minimum initial unit obligations:

(1) BLM will deem the unit agreement void as though it was never in effect;

(2) BLM will deem any lease extension based upon the existence of the unit as void retroactive to the date the unit was effective; and

(3) Any lease segregations based on the unit become invalid.

(b) BLM will send the unit operator a written decision confirming that the unit agreement is void.

§ 3284.4 How are unit agreement terms affected after completion of the initial unit well?

(a) Upon completion of a unit well that BLM determines will produce or utilize geothermal resources in commercial quantities, the unit operator must submit a proposed participating area application under § 3282.3, and no additional drilling to meet unit obligations is required. If no additional drilling in the unit occurs, the unit area will contract to the participating area as specified in the unit agreement.

(b) If a unit operator drills a well designed to produce or utilize geothermal resources in commercial quantities, but the well will not produce commercially or is not producible, the unit operator must continue drilling additional wells within the timeframes specified in the unit agreement until a unit well is completed that BLM determines will produce or utilize geothermal resources in commercial quantities. BLM may terminate a unit if additional wells are not drilled within the timeframes specified in the unit agreement.

(c) The unit agreement will expire if no well that BLM determines will produce or utilize geothermal resources in commercial quantities is completed within the timeframes specified in the unit agreement.

(d) BLM will send the unit operator a written decision confirming that the unit agreement has been terminated or has expired.

§ 3284.5 How do unit operations affect lease extensions?

(a) Once the minimum initial unit obligation is met, lease extensions approved under § 3207.17 of this chapter based upon unit commitment will remain in effect until the unit is relinquished, expires, terminates, or the lease on which the initial unit obligation was met is eliminated from the unit.

(b) As long as there are commercial operations within the unit or there exists a unit well that BLM has determined is producing or utilizing geothermal resources in commercial quantities, lease extensions for any leases or portions of leases within the participating area will remain in effect as long as operations meet the requirements of § 3207.15 of this chapter.

§ 3284.6 May BLM authorize a working interest owner to drill a well on lands committed to the unit?

(a) BLM may authorize a working interest owner to drill a well on the interest owner's lease only if it is located outside of an established participating area. However, BLM will only do so upon determining that:

(1) The unit operator is not diligently pursuing unit development; and

(2) Drilling the well is in the public interest.

(b) If BLM determines that a working interest has completed a well that will produce or utilize geothermal resources in commercial quantities, the unit operator must:

(1) Apply to revise the participating area to include the well; and

(2) Operate the well.

§ 3284.7 May BLM authorize operations on uncommitted Federal leases located within a unit?

BLM may authorize a lessee/operator to conduct operations on an uncommitted Federal lease located within a unit if the lessee/operator demonstrates to our satisfaction that operations on the lease are:

(a) In the public interest; and

(b) Will not unnecessarily affect unit operations.

§ 3284.8 May a unit have multiple operators?

A unit may have only one operator.

§ 3284.9 May BLM set or modify production or injection rates?

BLM may set or modify the quantity, rate, or location of production or injection occurring under a unit agreement to ensure protection of Federal resources.

§ 3284.10 What must a unit operator do to prevent or compensate for drainage?

The unit operator must take all necessary measures to prevent or compensate for drainage of geothermal resources from unitized land by wells on land not subject to the unit agreement (see § § 3210.16 and 3210.17 of this chapter).

§ 3284.11 Must the unit operator develop and operate on every lease or tract in the unit to comply with the obligations in the underlying leases or agreements?

The unit operator is not required to develop and operate on every lease or tract in the unit agreement to comply with the obligations in the underlying leases or agreement. The development and operation on any lands subject to a unit agreement is considered full performance of all obligations for development and operation for every separately owned lease or tract in the unit, regardless of whether there is development of any particular tract of the unit area.

§ 3284.12 When must the unit operator notify BLM of any changes of lease and tract commitment status?

The unit operator must provide updated documentation of commitment status (see § § 3281.8 through 3281.10) of all leases and tracts to BLM whenever a change in commitment, such as the expiration of a private lease, occurs. The unit operator must submit the documentation to BLM within 30 days after the change occurs. The unit operator must also notify all lessees and mineral interest owners of these changes.

Subpart 3285—Unit Termination

§ 3285.1 When may BLM terminate a unit agreement?

BLM may terminate a unit agreement if the unit operator does not comply with any term or condition of the unit agreement.

§ 3285.2 When may BLM approve a voluntary termination of a unit agreement?

BLM may approve the voluntary termination of a unit agreement at any time:

(a) After receiving a signed certification agreeing to the termination from a sufficient number of the working interest owners specified in the unit agreement who together represent a majority interest in the unit agreement; and

(b)(1) After the completion of the initial unit obligation well but before the establishment of a participating area; or

(2) After a participating area is established, upon receipt of information providing adequate assurance that:

(i) Diligent development and production of known commercial geothermal resources will occur; and

(ii) The public interest is protected.

Subpart 3286—Model Unit Agreement

§ 3286.1 Model Unit Agreement.

A unit agreement may use the following language:

Unit Agreement for the Development and Operation of the ——— Unit Area, County of ———, State of ———.

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This Agreement entered into as of the ——— day of ———, 20 ———, by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the ''parties hereto''. Whereas the parties hereto are the owners of working, royalty, or other geothermal resources interests in land subject to this Agreement; and

Whereas the Geothermal Steam Act of 1970 (84 Stat. 1566), as amended, hereinafter referred to as the ''Act'' authorizes Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under a unit agreement for the purpose of more properly conserving the natural resources of any geothermal resources reservoir, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

Whereas the parties hereto hold sufficient interest in the ——— Unit Area covering the land herein described to effectively control operations therein; and

Whereas, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operations of the area subject to this Agreement under the terms, conditions, and limitations herein set forth;

Now, therefore, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined Unit Area, and agree severally among themselves as follows:

Article I—Enabling Act and Regulations

1.1 The Act and all valid pertinent U.S. Department of the Interior regulations, including operating and unit plan regulations, heretofore or hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands.

1.2 As to non-Federal lands, the Bureau of Land Management (''BLM'') geothermal resources operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

Article II—Definitions

2.1 The following terms shall have the meanings here indicated:

(a) *Geothermal Lease.* A lease issued under the act of December 24, 1970 (84 Stat. 1566), as amended, pursuant to the leasing regulations contained in 43 CFR Group 3200 and, unless the context indicates otherwise, ''lease'' shall mean a geothermal lease.

(b) *Unit Area.* The area described in Article III of this Agreement.

(c) *Unit Operator.* The person, association, partnership, corporation, or other business entity designated under this Agreement to conduct operations on Unitized Land as specified herein.

(d) *Participating Area.* That area of the Unit deemed to be productive as described in Article 12.1 herein and areas committed to the Unit by the Authorized Officer needed for support of operations of the Unit Area. The production allocated for lands used for support of operations shall be approved by the Authorized Officer pursuant to Articles 12.1 and 13.1 herein.

(e) *Working Interest.* The interest held in geothermal resources or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in this Agreement, the owner of such interest is vested with the right to explore for, develop, produce and utilize such resources. The right delegated to the Unit Operator as such by this Agreement is not to be regarded as a Working Interest.

(f) *Secretary.* The Secretary of the Interior or any person duly authorized to exercise powers vested in that officer.

(g) *Director.* The Director of the Bureau of Land Management or any person duly authorized to exercise powers vested in that officer.

(h) *Authorized Officer.* Any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

Article III—Unit Area and Exhibits

3.1 The area specified on the map attached hereto marked ''Exhibit A'' is hereby designated and recognized as constituting the Unit Area, containing ——— acres, more or less. The above-described Unit Area shall be expanded, when practicable, to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction is deemed to be necessary or advisable to conform with the purposes of this Agreement.

3.2 Exhibit A attached hereto and made a part hereof is a map showing the boundary of the Unit Area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator.

3.3 Exhibit B attached hereto and made a part thereof is a schedule showing to the extent known to the Unit Operator the acreage, percentage, and kind of ownership of geothermal resources interests in all lands in the Unit Area.

3.4 Exhibits A and B shall be revised by the Unit Operator whenever changes in the Unit Area render such revision necessary, or when requested by the authorized officer, and not less than five copies of the revised Exhibits shall be filed with the authorized officer.

Article IV—Contraction and Expansion of Unit Area

4.1 Unless otherwise specified herein, the expansion and/or contraction of the Unit Area contemplated in Article 3.1 hereof shall be effected in the following manner:

(a) The Unit Operator, either on demand of the authorized officer or on its own motion and after prior concurrence by the authorized officer, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the Unit Area, the reasons therefore, and the proposed effective date thereof, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the authorized officer, and copies thereof mailed to the last known address of each Working Interest Owner, Lessee, and Lessor whose interests are affected, advising that 30 days will be allowed to submit any objections to the Unit Operator.

(c) Upon expiration of the 30-day period provided in the preceding item 4.1(b), Unit Operator shall file with the authorized officer evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto that have been filed with the Unit Operator, together with an application in sufficient number, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the authorized officer, become effective as of the date prescribed in the notice thereof.

4.2 Unitized Leases, insofar as they cover any lands excluded from the Unit Area under any of the provisions of this Article IV, may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions contained in the Act, and the lease or leases and amendments thereto, except that operations and/or production under this Unit Agreement shall not serve to maintain or continue the excluded portion of any lease.

4.3 All legal subdivisions of unitized lands (i.e., 40 acres by Governmental survey or its nearest lot or tract equivalent in instances of irregular surveys), no part of which is entitled to be within a Participating Area on the 5th anniversary of the effective date of the initial Participating Area established under this Agreement, shall be eliminated automatically from this Agreement effective as of said 5th anniversary. Such lands shall no longer be a part of the Unit Area and shall no longer be subject to this Agreement, unless diligent drilling operations are in progress on an exploratory well on said 5th anniversary, in which event such lands shall not be eliminated from the Unit Area for as long as exploratory drilling operations are continued diligently with not more than six (6) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.4 An exploratory well, for the purposes of this Article IV, is defined as any well, regardless of surface location, projected for completion:

(a) In a zone or deposit below any zone or deposit for which a Participating Area has been established and is in effect; or

(b) At a subsurface location under Unitized Lands not entitled to be within a Participating Area.

4.5 In the event an exploratory well is completed during the six (6) months immediately preceding the 5th anniversary of the initial Participating Area established under this Agreement, lands not entitled to be within a Participating Area shall not be eliminated from this Agreement on said 5th anniversary, provided the drilling of another exploratory well is commenced under an approved Plan of Development within six (6) months after the completion of said well. In such event, the land not entitled to be in participation shall not be eliminated from the Unit Area so long as exploratory drilling operations are continued diligently with not more than six (6) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.6 With prior approval of the authorized officer, a specified period of time in excess of six (6) months may be allowed to elapse between the completion of one well and the commencement of the next well without the automatic elimination of nonparticipating acreage.

4.7 Unitized lands proved productive by drilling operations that serve to delay automatic elimination of lands under this Article IV shall be incorporated into a Participating Area (or Areas) in the same manner as such lands would have been incorporated in such areas had such lands been proven productive during the year preceding said 5th anniversary.

4.8 In the event nonparticipating lands are retained under this Agreement after the 5th anniversary of the initial Participating Area as a result of exploratory drilling operations, all legal subdivisions of unitized land (i.e., 40 acres by Government survey or its nearest lot or tract equivalent in instances of irregular Surveys), no part of which is entitled to be within a Participating Area, shall be eliminated automatically as of the 183rd day, or such later date as may be established by the authorized officer, following the completion of the last well recognized as delaying such automatic elimination beyond the 5th anniversary of the initial Participating Area established under this Agreement.

Article V—Unitized Land and Unitized Substances

5.1 All land committed to this Agreement shall constitute land referred to herein as ''Unitized Land.'' All geothermal resources in and produced from any and all formations of the Unitized Land are unitized under the terms of this agreement and herein are called ''Unitized Substances.''

Article VI—Unit Operator

6.1 ——— is hereby designated as Unit Operator, and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, production, distribution, and utilization of Unitized Substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in Unitized Substances, and the term ''Working Interest Owner,'' when used herein, shall include or refer to Unit Operator as the owner of a Working Interest when such an interest is owned by it.

Article VII—Resignation or Removal of Unit Operator

7.1 The Unit Operator shall have the right to resign. Such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator or terminate Unit Operators rights, as such, for a period of six (6) months after notice of its intention to resign has been served by Unit Operator on all Working Interest Owners and the authorized officer, nor until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment, whichever is required by the authorized officer, unless a new Unit

Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

7.2 The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of Working Interests as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the authorized officer.

7.3 The resignation or removal of Unit Operator under this Agreement shall not terminate its right, title, or interest as the owner of a Working Interest or other interest in Unitized Substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, material, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or, if no such new unit operator is elected, to the common agent appointed to represent the Working Interest Owners in any action taken hereunder, to be used for the purpose of conducting operations hereunder.

7.4 In all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the Working Interest Owners shall be jointly responsible for performance of the duties and obligations of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

7.5 The resignation or removal of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation or removal.

Article VIII—Successor Unit Operator

8.1 If, prior to the establishment of a Participating Area hereunder, the Unit Operator shall resign as Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by vote of the more than one-half of the owners of the Working Interests in Unitized Substances, based on their respective shares, on an acreage basis, in the Unitized Land.

8.2 If, after the establishment of a Participating Area hereunder, the Unit Operator shall resign as Unit Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by a vote of more than one-half of the owners of the Working Interests in Unitized Substances, based on their respective shares, on a participating acreage basis; provided that, if a majority but less than 60 percent of the Working Interest in the Participating Lands is owned by a party to this agreement, a concurring vote of one or more additional Working Interest Owners owning 10 percent or more of the Working Interest in the participating land shall be required to select a new Unit Operator.

8.3 The selection of a successor Unit Operator shall not become effective until:

(a) The Unit Operator so selected shall accept in writing the duties, obligations, and responsibilities of the Unit Operator; and

(b) The selection shall have been approved by the authorized officer.

8.4 If no successor Unit Operator is selected and qualified as herein provided, the authorized officer at his or her election may declare this Agreement terminated.

Article IX—Accounting Provisions and Unit Operating Agreement

9.1 Costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of Working Interests; all in accordance with the agreement or agreements entered into by and between the Unit Operator and the owners of Working Interests, whether one or more, separately or collectively.

9.2 Any agreement or agreements entered into between the Working Interest Owners and the Unit Operator as provided in this Article, whether one or more, are herein referred to as the ''Unit Operating Agreement.''

9.3 The Unit Operating Agreement shall provide the manner in which the Working Interest Owners shall be entitled to receive their respective share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other contracts, and such other rights and obligations, as between Unit Operator and the Working Interest Owners.

9.4 Neither the Unit Operating Agreement nor any amendment thereto shall be deemed either to modify any of the terms and conditions of this Agreement or to relieve the Unit Operator of any right or obligation established under this Agreement.

9.5 In case of any inconsistency or conflict between this Agreement and the Unit Operating Agreement, this Agreement shall govern.

9.6 Three true copies of any Unit Operating Agreement executed pursuant to this Article IX shall be filed with the authorized officer prior to approval of this Agreement.

Article X—Rights and Obligations of Unit Operator

10.1 The right, privilege, and duty of exercising any and all rights of the parties hereto that are necessary or convenient for exploring, producing, distributing, or utilizing Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator as provided in this Agreement in accordance with a Plan of Development approved by the authorized officer.

10.2 Upon request by Unit Operator, acceptable evidence of title to geothermal resources interests in the Unitized Land shall be deposited with the Unit Operator and together with this Agreement shall constitute and define the rights, privileges, and obligations of Unit Operator.

10.3 Nothing in this Agreement shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that the Unit Operator, in its capacity as Unit Operator, shall exercise the rights of possession and use vested in the parties hereto only for the purposes specified in this Agreement.

10.4 The Unit Operator shall take such measures as the authorized officer deems appropriate and adequate to prevent drainage of Unitized Substances from Unitized Land by wells on land not subject to this Agreement.

10.5 The authorized officer is hereby vested with authority to alter or modify, from time to time, in the authorized officer's discretion, the rate of prospecting and development and the quantity and rate of production under this Agreement.

Article XI—Plan of Development

11.1 Concurrently with the submission of this Agreement to BLM for approval, the Unit Operator shall submit to BLM an acceptable initial Plan of Development. Said plan shall be as complete and adequate as the authorized officer may determine to be necessary for timely exploration and/or development, and to insure proper protection of the environment and conservation of the natural resources of the Unit Area.

11.2 Prior to the expiration of the initial Plan of Development, or any subsequent Plan of Development, Unit Operator shall submit for approval of the authorized officer an acceptable subsequent Plan of Development for the Unit Area which, when approved by the authorized officer, shall constitute the exploratory and/or development drilling and operating obligations of Unit Operator under this Agreement for the period specified therein.

11.3 Any Plan of Development submitted hereunder shall:

(a) Specify the number and locations of any exploration operations to be conducted or wells to be drilled, and the proposed order and time for such operations or drilling; and

(b) To the extent practicable, specify the operating practices regarded as necessary and advisable for proper conservation of natural resources and protection of the environment in compliance with section 1.1 of this Agreement.

11.4 The Plan of Development submitted concurrently with this Agreement for approval shall prescribe that the Unit Operator shall begin to drill a unit well identified in the Plan of Development approved by the authorized officer, unless on such effective date a well is being drilled conformably with the terms hereof, and thereafter continue such drilling diligently until the ——— formation has been tested or until at a lesser depth unitized substances shall be discovered that can be produced in commercial quantities (i.e., quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the authorized officer that further drilling of said well would be unwarranted or impracticable; provided, however, that the Unit Operator shall not in any event be required to drill said well to a depth in excess of ——— feet.

11.5 The initial Plan of Development and/or subsequent Plan of Development submitted under this Article shall provide that the Unit Operator shall initiate a continuous drilling program providing for drilling of no less than one well at a time, and allowing no more than six (6) months time to elapse between completion and testing of one well and the beginning of the

next well, until a well capable of producing or utilizing Unitized Substances in commercial quantities is completed to the satisfaction of the authorized officer, or until it is reasonably proven that the Unitized Land is incapable of producing Unitized Substances in commercial quantities in the formations drilled under this Agreement.

11.6 The authorized officer may modify the exploration operation or drilling requirements of the initial or subsequent Plans of Development by granting reasonable extensions of time when, in his or her opinion, such action is warranted and in the public interest.

11.7 Until a well capable of producing or utilizing Unitized Substances in commercial quantities is completed, the failure of Unit Operator in a timely manner to conduct any exploration operations or drill any of the wells provided for in Plans of Development required under this Article XI or to submit a timely and acceptable subsequent Plan of Development, shall, after notice of default or notice of prospective default to Unit Operator by the authorized officer, and after failure of Unit Operator to remedy any actual default within a reasonable time (as determined by the authorized officer), result in automatic termination of this Agreement effective as of the date of the default, as determined by the authorized officer.

11.8 Separate Plans of Development may be submitted for separate productive zones, subject to the approval of the authorized officer. Also subject to the approval of the authorized officer, Plans of Development shall be modified or supplemented when necessary to meet changes in conditions or to protect the interest of all parties to this Agreement.

Article XII—Participating Areas

12.1 Prior to the commencement of production of Unitized Substances, the Unit Operator shall submit for approval by the authorized officer a schedule (or schedules) of all land then regarded as reasonably proven to be productive from a pool or deposit discovered or developed; all lands in said schedule (or schedules), on approval of the authorized officer, will constitute a Participating Area (or Areas), effective as of the date production commences or the effective date of this Unit Agreement, whichever is later. Said schedule (or schedules) shall also set forth the percentage of Unitized Substances to be allocated, as herein provided, to each tract in the Participating Area (or Areas), and shall govern the allocation of production, commencing with the effective date of the Participating Area.

12.2 A separate Participating Area shall be established for each separate pool or deposit of Unitized Substances or for any group thereof that is produced as a single pool or deposit, and any two or more Participating Areas so established may be combined into one, on approval of the authorized officer. The effective date of any Participating Area established after the commencement of actual production of Unitized Substances shall be the first of the month in which is obtained the knowledge or information on which the establishment of said Participating Area is based, unless a more appropriate effective date is proposed by the Unit Operator and approved by the authorized officer.

12.3 Any Participating Area (or Areas) established under 12.1 or 12.2 above shall, subject to the approval of the authorized officer, be revised from time to time to:

(a) Include additional land then regarded as reasonably proved to be productive from the pool or deposit for which the Participating Area was established;

(b) Include lands necessary to unit operations;

(c) Exclude land then regarded as reasonably proved not to be productive from the pool or deposit for which the Participating Area was established; or

(d) Exclude land not necessary to unit operations; and

(e) Revise the schedule (or schedules) of allocation percentages accordingly.

12.4 Subject to the limitation cited in 12.1 hereof, the effective date of any revision of a Participating Area established under Articles 12.1 or 12.2 shall be the first of the month in which is obtained the knowledge or information on which such revision is predicated; provided, however, that a more appropriate effective date may be used if justified by the Unit Operator and approved by the authorized officer.

12.5 No land shall be excluded from a Participating Area on account of depletion of the Unitized Substances, except that any Participating Area established under the provisions of this Article XII shall terminate automatically whenever all operations are abandoned in the pool or deposit for which the Participating Area was established.

12.6 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of a Participating Area.

Article XIII—Allocation of Unitized Substances

13.1 All Unitized Substances produced from a Participating Area established under this Agreement shall be deemed to be produced equally, on an acreage basis, from the several tracts of Unitized Land within the Participating Area established for such production.

13.2 For the purpose of determining any benefits accruing under this Agreement, each Tract of Unitized Land shall have allocated to it such percentage of said production as the number of acres in the Tract included in the Participating Area bears to the total number of acres of Unitized Land in said Participating Area.

13.3 Allocation of production hereunder for purposes other than settlement of the royalty obligations of the respective Working Interest Owners shall be on the basis prescribed in the Unit Operating Agreement, whether in conformity with the basis of allocation set forth above or otherwise.

13.4 The Unitized Substances produced from a Participating Area shall be allocated as provided herein, regardless of whether any wells are drilled on any particular part or tract of said Participating Area.

Article XIV—Relinquishment of Leases

14.1 Pursuant to the provisions of the Federal leases and 43 CFR subpart 3213, a lessee of record shall, subject to the provisions of the Unit Operating Agreement, have the right to relinquish any of its interests in leases committed hereto, in whole or in part; provided, that no relinquishment shall be made of interests in land within a Participating Area without the prior approval of the authorized officer.

14.2 A Working Interest Owner may exercise the right to surrender, when such right is vested in it by any non-Federal lease, sublease, or operating agreement, provided that each party who will or might acquire the Working Interest in such lease by such surrender or by forfeiture is bound by the terms of this Agreement, and further provided that no relinquishment shall be made of such land within a Participating Area without the prior written consent of the non-Federal Lessor.

14.3 If, as the result of relinquishment, surrender, or forfeiture, the Working Interests become vested in the fee owner or lessor of the Unitized Substances, such owner may:

(a) Accept those Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement, or

(b) Lease the portion of such land as is included in a Participating Area established hereunder, subject to this Agreement and the Unit Operating Agreement, and provide for the independent operation of any part of such land that is not then included within a Participating Area established hereunder.

14.4 If the fee owner or lessor of the Unitized Substances does not, (1) accept the Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement, or (2) lease such lands as provided in 14.3 above within six (6) months after the relinquished, surrendered, or forfeited Working Interest becomes vested in said fee owner or lessor, the Working Interest benefits and obligations accruing to such land under this Agreement and the Unit Operating Agreement shall be shared by the owners of the remaining unitized Working Interests in accordance with their respective Working Interest ownerships, and such owners of Working Interests shall compensate the fee owner or lessor of Unitized Substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease or leases in effect when the Working Interests were relinquished, surrendered, or forfeited.

14.5 Subject to the provisions of 14.4 above, an appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of any surrendered or forfeited Working Interest subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within thirty (30) days.

14.6 In the event no Unit Operating Agreement is in existence and a mutually acceptable agreement cannot be consummated between the proper parties, the authorized officer may prescribe such

reasonable and equitable conditions of agreement as he deems warranted under the circumstances.

14.7 The exercise of any right vested in a Working Interest Owner to reassign such Working Interest to the party from whom it was obtained shall be subject to the same conditions as set forth in this Article XIV in regard to the exercise of a right to surrender.

Article XV—Rentals

15.1 ny unitized lease on non-Federal land containing provisions that would terminate such lease unless (1) drilling operations are commenced upon the land covered thereby within the time therein specified or (2) rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provisions of this Agreement, be deemed to accrue as to the portion of the lease not included within a Participating Area and become payable during the term thereof as extended by this Agreement, and until the required drillings are commenced upon the land covered thereby.

15.2 Nothing herein operates to relieve the lessees of any land from their respective lease obligations for the payment of any rental or royalty due under their leases.

15.3 Rental and royalty due on the leases committed to the Unit shall be paid by Working Interest Owners responsible under existing contracts, laws, and regulations, or by the Unit Operator.

Article XVI—Operations on Nonparticipating Land

16.1 Any party hereto owning or controlling the Working Interest in any Unitized Land having a regular well location may, with the approval of the authorized officer and at such party's sole risk, costs, and expense, drill a well to test any formation of deposit for which a Participating Area has not been established or to test any formation or deposit for which a Participating Area has been established if such location is not within said Participating Area, unless within 30 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill such a well in like manner as other wells are drilled by the Unit Operator under this Agreement.

16.2 If any well drilled by a Working Interest Owner other than the Unit Operator proves that the land upon which said well is situated may properly be included in a Participating Area, such Participating Area shall be established or enlarged as provided in this Agreement, and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this Agreement and the Unit Operating Agreement.

Article XVII—Leases and Contracts Conformed and Extended

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or utilization of geothermal resources on lands committed to this Agreement, are hereby expressly modified and amended only to the extent necessary to make the same conform to the provisions hereof. Otherwise said leases, subleases, and contracts shall remain in full force and effect.

17.2 The parties hereto consent that the Secretary shall, by his or her approval hereof, modify and amend the Federal leases committed hereto to the extent necessary to conform said leases to the provisions of this Agreement.

17.3 The development and/or operation of lands subject to this Agreement under the terms hereof shall be deemed full performance of any obligations for development and operation with respect to each and every separately owned tract subject to this Agreement, regardless of whether there is any development of any particular tract of the Unit Area.

17.4 Drilling and/or producing operations performed hereunder upon any tract of Unitized Lands will be deemed to be performed upon and for the benefit of each and every tract of Unitized Land.

17.5 Suspension of operations and/or production on all Unitized Lands pursuant to direction or consent of the Secretary or his duly authorized representative shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of Unitized Land. A suspension of operations and/or production limited to specified lands shall be applicable only to such lands.

17.6 Subject to the provisions of Article XV hereof and 17.10 of this Article, each lease, sublease, or contract relating to the exploration, drilling, development, or utilization of geothermal resources of lands other than those of the United States committed to this Agreement, is hereby extended beyond any such term provided therein so that it shall be continued for and during the term of this Agreement.

17.7 Subject to the lease renewal and the readjustment provision of the Act, any Federal lease committed hereto may, as to the Unitized Lands, be continued for the term so provided in such lease, or as extended by law or regulation. If it is appropriate for BLM to extend the term of a lease to match the term of the unit, the Unit Operator shall take the actions required for such extension under 43 CFR 3207.17, This subsection shall not operate to extend any lease or portion thereof as to lands excluded from the Unit Area by the contraction thereof.

17.8 Each sublease or contract relating to the operations and development of Unitized Substances from lands of the United States committed to this Agreement shall be continued in force and effect for and during the term of the underlying lease.

17.9 Any Federal lease heretofore or hereafter committed to any such unit plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed, as of the effective date of unitization.

17.10 In the absence of any specific lease provision to the contrary, any lease, other than a Federal lease, having only a portion of its land committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions, commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

17.11 Upon termination of this Agreement, the leases covered hereby may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions of the Act, the lease or leases, and amendments thereto.

Article XVIII—Effective Date and Term

18.1 This Agreement shall become effective upon approval by the Secretary or his duly authorized representative, and shall terminate five (5) years from said effective date unless:

(a) Such date of expiration is extended by the authorized officer;

(b) Unitized Substances are produced or utilized in commercial quantities in which event this Agreement shall continue for so long as Unitized Substances are produced or utilized in commercial quantities; or

(c) This Agreement is terminated prior to the end of said five (5) year period as heretofore provided.

18.2 This Agreement may be terminated at any time by the owners of a majority of the Working Interests on an acreage basis, with the approval of the authorized officer. Notice of any such approval shall be given by the Unit Operator to all parties hereto.

Article XIX—Appearances

19.1 Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior, and to appeal from decisions, orders or rulings issued under the regulations of said Department, or to apply for relief from any of said regulations or in any proceedings relative to operations before the Department of the Interior or any other legally constituted authority: Provided, however, that any interested parties shall also have the right, at their own expense, to be heard in any such proceeding.

Article XX—No Waiver of Certain Rights

20.1 Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the State wherein lands subject to this Agreement are located, or of the United States, or regulations issued thereunder, in any way affecting such party, or as a waiver by any such party of any right beyond his or its authority to waive.

Article XXI—Unavoidable Delay

21.1 The obligations imposed by this Agreement requiring Unit Operator to commence or continue drilling or to produce or utilize Unitized Substances from any of the land covered by this Agreement, shall be suspended while, but only so long as, Unit Operator, despite the exercise of due care and diligence, is prevented from complying with

such obligations, in whole or in part, by strikes, Acts of God, Federal or other applicable law, Federal or other authorized governmental agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials in open market, or other matters beyond the reasonable control of Unit Operator, whether similar to matters herein enumerated or not.

21.2 No unit obligation that is suspended under this section shall become due less than thirty (30) days after it has been determined that the suspension is no longer applicable.

21.3 Determination of creditable ''Unavoidable Delay'' time shall be made by the Unit Operator, subject to approval by the authorized officer.

Article XXII—Postponement of Obligations

22.1 Notwithstanding any other provisions of this Agreement, the Authorized officer, on his own initiative or upon appropriate justification by Unit Operator, may postpone any obligation established by and under this Agreement to commence or continue drilling or to operate on or produce Unitized Substances from lands covered by this Agreement when, in his judgment, circumstances warrant such action.

Article XXIII—Nondiscrimination

23.1 In connection with the performance of work under this Agreement, the Operator agrees to comply with all of the provisions of section 202(1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), which are hereby incorporated by reference in this Agreement.

Article XXIV—Counterparts

24.1 This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instruments in writing specifically referring hereto, and shall be binding upon all parties who have executed such a counterpart, ratification, or consent hereto, with the same force and effect as if all such parties had signed the same document.

Article XXV—Subsequent Joinder

25.1 If the owner of any substantial interest in geothermal resources under a tract within the Unit Area fails or refuses to subscribe or consent to this Agreement, the owner of the Working Interest in that tract may withdraw said tract from this Agreement by written notice delivered to the authorized officer and the Unit Operator prior to the approval of this Agreement by the authorized officer.

25.2 Any geothermal resources interests in lands within the Unit Area not committed hereto prior to approval of this Agreement may thereafter be committed by the owner or owners thereof subscribing or consenting to this Agreement, and, if the interest is a Working Interest, by the owner of such interest also subscribing to the Unit Operating Agreement.

25.3 After operations are commenced hereunder, the right of subsequent joinder, as provided in this Article XXV, by a Working Interest Owner is subject to such requirements or approvals, if any, pertaining to such joinder, as may be provided for in the Unit Operating Agreement. Joinder to the Unit Agreement by a Working Interest Owner at any time must be accompanied by appropriate joinder to the Unit Operating Agreement, if more than one committed Working Interest Owner is involved, in order for the interest to be regarded as committed to this Unit Agreement.

25.4 After final approval hereof, joinder by a nonworking interest owner must be consented to in writing by the Working Interest Owner committed hereto and responsible for the payment of any benefits that may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this Agreement unless the corresponding Working Interest is committed hereto.

25.5 Except as may otherwise herein be provided, subsequent joinders to this Agreement shall be effective as of the first day of the month following the filing with the authorized officer of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this Agreement, unless objection to such joinder is duly made within sixty (60) days by the authorized officer.

Article XXVI—Covenants Run With the Land

26.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance, of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

26.2 No assignment or transfer of any Working Interest or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

Article XXVII—Notices

27.1 All notices, demands, or statements required hereunder to be given or rendered to the parties hereto shall be deemed fully given if given in writing and personally delivered to the party or sent by postpaid registered or certified mail, addressed to such party or parties at their respective addresses set forth in connection with the signatures hereto, or to the ratification or consent hereof, or to such other address as any such party may have furnished in writing to the party sending the notice, demand, or statement.

Article XXVIII—Loss of Title

28.1 In the event title to any tract of Unitized Land shall fail and the true owner cannot be induced to join in this Agreement, such tract shall be automatically regarded as not committed hereto, and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title.

28.2 In the event of a dispute as to title to any royalty, Working Interest, or other interests subject hereto, payment or delivery on account thereof may be withheld without liability for interest until the dispute is finally settled: Provided, That, as to Federal land or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the authorized officer to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

Article XXIX—Taxes

29.1 The Working Interest Owners shall render and pay for their accounts and the accounts of the owners of nonworking interests all valid taxes on or measured by the Unitized Substances in and under, or that may be produced, gathered, and sold or utilized from, the land subject to this Agreement after the effective date hereof.

29.2 The Working Interest Owners on each tract may charge a proper proportion of the taxes paid under 29.1 hereof to the owners of nonworking interests in said tract, and may reduce the allocated share of each royalty owner for taxes so paid. No taxes shall be charged to the United States or the State of ——— or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

Article XXX—Relation of Parties

30.1 It is expressly agreed that the relation of the parties hereto is that of independent contractors, and nothing in this Agreement contained, expressed, or implied, nor any operations conducted hereunder, shall create or be deemed to have created a partnership or association between the parties hereto or any of them.

Article XXXI—Special Federal Lease Stipulations and/or Conditions

31.1 Nothing in this Agreement shall modify special lease stipulations and/or conditions applicable to lands of the United States. No modification of the conditions necessary to protect the lands or functions of lands under the jurisdiction of any Federal agency is authorized except with prior consent in writing whereby the authorizing official specifies the modification permitted.

In witness whereof, the parties hereto have caused this Agreement to be executed and have set opposite their respective names the date of execution.

Unit operator (as unit operator and as working interest owner):

By:
Name:
Title:
Date:

Subpart 3287—Relief and Appeals

§ 3287.1 May the unit operator request a suspension of unit obligations or development requirements?

The unit operator may provide a written request to BLM to suspend any or all obligations under the unit agreement. BLM will specify the term of

the suspension and any requirements the unit operator must meet for the suspension to remain in effect.

§ 3287.2 When may BLM grant a suspension of unit obligations?

(a) BLM may grant a suspension of unit obligations when, despite the exercise of due care and diligence, the unit operator is prevented from complying with such obligations, in whole or in part, by:

(1) Acts of God;

(2) Federal, state, or municipal laws;

(3) Labor strikes;

(4) Unavoidable accidents;

(5) Uncontrollable delays in transportation;

(6) The inability to obtain necessary materials or equipment in the open market; or

(7) Other circumstances that BLM determines are beyond the reasonable control of the unit operator, such as agency timeframes required to complete environmental documents.

(b) BLM may deny the request for suspension of unit obligations when the suspension would involve a lengthy or indefinite period. For example, BLM might not approve a suspension of initial drilling obligations due to a unit operator's inability to obtain an electrical sales contract, or when poor economics affect the electrical generation market, limiting the opportunity to obtain a viable sales contract. BLM may grant a suspension of subsequent drilling obligations when it is in the public interest.

§ 3287.3 How does a suspension of unit obligations affect the terms of the unit agreement?

(a) BLM may suspend any terms of the unit agreement during the period a suspension is effective. During the period of the suspension, the involved unit terms are tolled. The suspension may not relieve the unit operator of its responsibility to meet other requirements of the unit agreement. For example, the unit operator may continue to be required to diligently develop or produce the resource during a suspension of drilling obligations.

(b) The unit operator must ensure all interests in the agreement are notified of any suspension granted and the terms of the suspension.

§ 3287.4 May a decision made by BLM under this part be appealed?

A unit operator or any other adversely affected person may appeal a BLM decision regarding unit administration or operations in accordance with § 3200.5 of this chapter.

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May 2, 2007

Part III

Department of the Interior

Minerals Management Service

30 CFR Parts 202, 206, 210, 217 and 218
Geothermal Royalty Payments, Direct Use Fees, and Royalty Valuation; Final Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 206, 210, 217, and 218

RIN 1010–AD32

Geothermal Royalty Payments, Direct Use Fees, and Royalty Valuation

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The MMS is promulgating new regulations to implement the provisions of the Energy Policy Act of 2005 (EPAct) governing the payment of royalty on geothermal resources produced from Federal leases and the payment of direct use fees in lieu of royalties. The EPAct provisions amend the Geothermal Steam Act of 1970 (GSA). The new regulations amend the current MMS geothermal royalty valuation regulations and simplify the royalty and direct use fee calculations for geothermal resources for leases issued under the EPAct and leases whose terms are modified under the EPAct. The new regulations also amend various related provisions in the MMS rules.

EFFECTIVE DATE: June 1, 2007.

FOR FURTHER INFORMATION CONTACT: Sharron Gebhardt, Lead Regulatory Specialist, Minerals Revenue Management (MRM), MMS, telephone (303) 231–3211, fax (303) 231–3781, or e-mail *sharron.gebhardt@mms.gov.* The principal authors of this rule are Sarah L. Inderbitzin and Herb Black of MRM, MMS, Department of the Interior.

SUPPLEMENTARY INFORMATION:

I. Background

A. Pre-EPAct Statutory Provisions and Existing Regulations

The existing rules applicable to geothermal resources were promulgated in 1991 under the GSA (30 U.S.C. 1001 *et seq.*) before its amendment by the EPAct (Pub. L. 109–58, 119 Stat. 594). The current royalty valuation methods for geothermal resources are grouped first by usage, i.e., electrical generation, direct use, and byproducts. Within each usage category, valuation methods are grouped by the method of disposition of the resources, i.e., arm's-length (unaffiliated) sales, non-arm's-length sales, and no sales.

The Secretary of the Interior established the Royalty Policy Committee (RPC) on August 1, 1995, in accordance with Public Law 92–463, Federal Advisory Committee Act, dated October 6, 1972. The RPC convened its first meeting in Denver, Colorado, on September 12–13, 1995.

The mission of the RPC is to provide policy advice representing the collective viewpoint of the states, Indians, mineral industry, and other parties to the Secretary of the Interior through the Director of the Minerals Management Service (MMS) and other officers of the Department of the Interior. This policy advice concerns the performance of discretionary functions involved in the Department's management of Federal and Indian mineral leases and revenues. The RPC reviews and comments on royalty management and other mineral-related policies and provides a sounding board to convey views representative of mineral lessees, operators, revenue payors, recipients, governmental agencies, and the interested public. The RPC may establish subcommittees or workgroups as it deems necessary for the purposes of compiling information or conducting research. Subcommittees or workgroups may not conduct business independent of the RPC and must report its recommendations to the full RPC for consideration. Subcommittees or workgroups meet as necessary to accomplish their assignments, subject to the approval of the RPC Chairperson.

On October 28, 2004, the RPC formed the Geothermal Valuation Subcommittee (Subcommittee) to address the MMS geothermal royalty valuation regulations to simplify the regulations and reduce administrative costs to the geothermal industry. The Subcommittee was comprised of members from one industry association, several geothermal producers, two of the major States affected, and MMS employees. A representative of the Bureau of Land Management (BLM) served as technical advisor to the Subcommittee. The RPC requested that the Subcommittee work together to develop more efficient royalty valuation methods that will ensure a fair return to the Federal Government as well as encourage geothermal development. The Subcommittee prepared a report and submitted it to the RPC; and on May 26, 2005, the RPC accepted the Subcommittee's recommendations.

B. The EPAct

On August 8, 2005, the President signed into law the EPAct, Pub. L. 109–58, 119 Stat. 594. Sections 221 through 237 of the EPAct, entitled the ''John Rishel Geothermal Steam Act Amendments,'' amended the GSA, 30 U.S.C. 1001 *et seq.* (1970). Congress enacted the EPAct geothermal amendments to encourage geothermal production through regulatory streamlining and incentives. S. Rep. No. 78, 109th Cong., 1st Sess. (2005).

C. The Proposed Rule

On July 21, 2006, MMS published a proposed rule in the **Federal Register** (71 FR 41516) that addressed implementing the EPAct provisions. It also incorporated most of the Subcommittee's concepts, with modifications necessary to comply with the EPAct.

For 30 CFR part 206, subpart H, we: (1) Explained the general royalty calculation and payment, direct use fee, and royalty valuation provisions of this subpart; (2) defined which leases the subpart applies to; (3) provided definitions of terms used in the subpart; (4) proposed some changes to conform to plain English writing; and (5) proposed changes necessary to implement provisions of the EPAct.

For 30 CFR parts 202, 210, and 218, we proposed changes necessary to implement provisions of the EPAct and reflect the proposed amendments to 30 CFR part 206, subpart H.

II. Comments on the Proposed Rule

The MMS received comments on the proposed rule from two States, one trade association, and two geothermal producers. These comments are analyzed and discussed below:

A. 30 CFR Part 202—Royalties

1. 202.351(a)(2)(ii) Royalties on geothermal resources

Public Comments: The trade association commented that the definition of ''gross proceeds'' in § 206.351 of the proposed rule should state that ''station usage power (including auxiliary load) * * * are not included [in the gross proceeds].''

MMS Response: The MMS specifically stated in proposed § 202.351(b)(2)(ii) that it ''will allow free of royalty or fees a reasonable amount of geothermal energy necessary to generate electricity for internal power plant operations or to generate electricity returned to the lease for lease operations'' (71 FR 41531). We believe that § 202.351(b)(2) would allow a lessee to use a reasonable amount of station usage power royalty free. Therefore, we did not include it in the definition of ''gross proceeds'' in § 206.351.

However, § 202.351 has been revised in the final rule in several respects to better reflect the new basis for royalty for leases issued under the EPAct (and leases whose royalty terms are converted to EPAct terms under the BLM final rule). Under 30 U.S.C.

1004(a)(1), a lease issued under the EPAct whose geothermal resource production is used for commercial production or generation of electricity must provide for a royalty as a specified percentage of the gross proceeds from the sale of the electricity. The royalty under such leases is no longer imposed on the volume of geothermal resources produced; it is imposed only on the proceeds derived from sale of the electrical energy, regardless of the volume used to generate the electricity.

In paragraph (a) of § 202.351, MMS has modified the proposal to clarify that royalties on electricity produced using geothermal resources will be at the royalty rate specified in the lease. Similarly, in paragraph (b)(1), MMS has added language to clarify that royalties are due on all proceeds derived from the sale of electricity generated using the geothermal resources produced from a lease.

We have made a number of clarifying changes to proposed paragraph (b)(2). Paragraph (b)(2) of the proposed rule identified certain volumes of geothermal resources that would be free of royalty or direct use fees—namely, (1) unavoidably lost resources and resources reinjected before use; (2) resources used to generate ''electricity for internal power plant operations'' (referred to in the final rule as ''plant parasitic electricity,'' which is defined in a revised definition in § 206.351); (3) resources used to generate electricity returned to the lease for lease operations (referred to in the final rule as ''electricity for Federal lease operations''); and (4) commercially demineralized water necessary for power plant operations or otherwise used on or for the benefit of the lease.

The relevance and consequences of these volume categories are different depending on the legal category of the lease involved and the use of the geothermal resources produced from the lease. The different legal categories to which a lease may belong are defined in § 206.351 of the final rule. As more fully prescribed in that section, ''Class I leases'' are leases issued before the date of enactment of the EPAct (or in response to an application pending on that date) which the lessee does not convert to EPAct terms. ''Class II leases'' are leases issued after the date of enactment of the EPAct (except for leases issued in response to an application pending on that date which the lessee does not convert to EPAct terms). ''Class III leases'' are leases issued before the date of enactment of the EPAct that the lessee converts to EPAct royalty terms. Paragraph (b)(2) in the final rule addresses what is free of royalty or direct use fees first by the legal category of the lease and then by the use of the resource.

Clause (i) of paragraph (b)(2) addresses Class I leases, which are covered by the existing rule. This paragraph preserves the existing rule's treatment for royalty purposes of each of the volume categories identified above—i.e., that all of them are free of royalty. The determination of the reasonable amount of the resource used to generate plant parasitic electricity under a Class I lease is subject to MMS jurisdiction. (Commercially demineralized water is relevant only under Class I leases, and therefore is not mentioned in the subsequent clauses addressing Class II and Class III leases.)

Clause (ii) of paragraph (b)(2) addresses Class II leases and Class III leases (leases with EPAct royalty terms) whose geothermal resources are used for the commercial production or generation of electricity or are sold at arm's length for the commercial production or generation of electricity. For these leases, if the lessee sells electricity on the commercial market, the lease provides for royalty as a percentage of gross proceeds derived from sale of the electricity. Unavoidably lost or reinjected resource volumes and volumes associated with generating plant parasitic electricity or electricity for lease operations do not result in generation of any electricity that is sold. It follows that there are no gross proceeds from the sale of electricity that result from them. Therefore, these volumes have no royalty consequence.

However, under a Class II lease or Class III lease, if the lessee sells the geothermal resource at arm's length before commercial production or generation of electricity, under the final rule royalty is a function of the gross proceeds derived from the sale of the resource. To the extent that any loss of resources is avoidable, MMS would require the lessee to pay royalties on that volume. Thus, it is appropriate to clarify that only unavoidably lost or reinjected volumes are not royalty-bearing. MMS will also allow free of royalty a reasonable amount of resource volumes used to generate electricity for Federal lease operations. (There is no plant parasitic electricity if the lessee sells the resource and, therefore, no resources are used to generate it.)

The existing rule and the proposed rule refer to electricity ''returned to the lease for lease operations.'' In the final rule, the phrasing of the term has been clarified to ''electricity for Federal lease operations.'' First, it is not necessary that this electricity be generated off the lease and then ''returned to the lease.'' Second, MMS wishes to clarify that resources used to generate electricity for non-Federal (e.g., state or private) lease operations are not royalty-free. Approval of the amount of resources used to generate electricity for lease operations that is royalty-free is subject to BLM, rather than MMS, jurisdiction.

In addition to the royalty effects discussed above, the rule must also address the question of what resources, if any, might be subject to direct use fees. Under 30 U.S.C. 1001(g), the term ''direct use'' means ''utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial production of electricity.'' The definition of the term ''direct use'' in the final rule at 30 CFR 206.351 is essentially identical. Section 206.351 then defines the term ''commercial production or generation of electricity'' to include the electricity or energy that is reasonably required both to produce the resource and to convert geothermal energy into electrical energy for sale. This definition includes the generation of both plant parasitic electricity and electricity for lease operations, as well as other uses of resources for lease operations. Therefore, where the lessee of a Class II lease or Class III lease sells electricity commercially, use of resources for these purposes, by definition, does not constitute a direct use under the final rule. The resources therefore are not subject to direct use fees.

The text of clause (ii) covers each of the situations and consequences described above.

Clause (iii) addresses direct use fees when the geothermal resources produced from a Class II lease or Class III lease are used for direct use purposes other than commercial production or generation of electricity, as those terms are defined in 30 CFR 206.351. It is appropriate to allow unavoidably lost and reinjected resource volumes to be free of direct use fees because they are not used and are not avoidably lost. However, because generating electricity for direct use lease operations falls within the definition of ''direct use'' under § 206.351, a direct use fee will be imposed on the associated volumes.

2. 202.353 Measurement standards for reporting and paying royalties

Public Comments: One State commented that proposed § 202.353, which adds a new paragraph requiring reporting to the ''nearest whole million'' for direct use leases, ''could encourage a lessee to control its incremental production to avoid royalties.'' The State recommended ''eliminating it.''

MMS Response: In the proposed rule, the MMS proposed to change the existing rule, at § 202.353(b)(2), which requires reporting to the ''nearest hundred gallons'' to require reporting to the ''nearest million gallons.'' The MMS also proposed to add a new subparagraph 202.353(b)(3), which states that lessees may report the quantity of direct use resources in ''millions of pounds to the nearest million pounds of geothermal fluid produced if valuation is in terms of mass.'' The MMS used millions of gallons because that is the volume measurement the Royalty Policy Committee (RPC) Geothermal Valuation Subcommittee recommended for the fee schedule. In addition, the MMS added the ''millions of pounds'' and changed to the ''millions of gallons'' to conform to the fee schedule we proposed in § 206.356. Therefore, we are not eliminating the requirement to report to the ''nearest whole million.'' In addition to this change, we have reformatted this section to make it easier to use.

B. 30 CFR Part 206—Product Valuation, Subpart H—Geothermal Resources

1. 30 CFR 206.351 What definitions apply to this subpart?

Definition of Class I, II, and III Leases

MMS did not receive any comments on its definition of the classes of leases subject to this rulemaking. However, after consultation with BLM, MMS determined that its definitions did not accurately reflect the royalty rate or direct use fees terms of the BLM regulations for each class of leases. Therefore, to clarify the classes of leases and be consistent with BLM regulations, we are changing the description of the lease classes in this final rule.

For Class I leases, we have eliminated any cross-references to ''Class II'' leases and clarified in part (1) that a conversion under 43 CFR 3212.25 relates to converting royalty rate terms. Thus, in the final rule, a Class I lease means:

(1) A lease that BLM issued before August 8, 2005, for which the lessee has not converted the royalty rate terms under 43 CFR 3212.25; or

(2) A lease that BLM issued in response to an application that was pending on August 8, 2005, for which the lessee has not made an election under 43 CFR 3200.8(b).

For Class II leases, in MMS's proposed rule, we inadvertently omitted a category of leases that qualify as ''Class II.'' The proposed rule defined Class II leases as only those leases BLM issues on or after the effective date of the final BLM regulation under 43 CFR subparts 3203, 3204, or 3205. However, a lease that BLM issued in response to an application that was pending on August 8, 2005, either before or after the date of the final BLM regulation, for which the lessee has made an election under 43 CFR 3200.8(b), is also a ''Class II'' lease. Therefore, we modified the Class II definition to capture all eligible leases issued after August 8, 2005. So, in the final rule, a Class II lease means:

> A lease that BLM issued after August 8, 2005, except for a lease issued in response to an application that was pending on August 8, 2005, for which the lessee does not make an election under 43 CFR 3200.8(b).

With respect to Class III leases, in our proposed rule, we stated that a ''*Class III lease* means a *Class I lease* that the lessee *converts to a Class II lease* under 43 CFR subpart 3212.'' (Emphasis added.) However, that definition misstated the leases to which it applied in two ways. First, only lessees of Class I leases that BLM issued *before* August 8, 2005, can convert the royalty terms of their leases under 43 CFR 3212.25. Lessees of leases that BLM issued in response to an application that was pending on August 8, 2005, for which the lessee has not made an election under 43 CFR 3200.8(b), could not convert the royalty terms of their leases under 43 CFR 3212.25 even though they are Class I leases. Therefore, the definition of Class III leases in the proposed rule referring to all Class I leases was inaccurate. Second, contrary to the definition in the proposed rule, a Class III lease would not convert to a Class II lease. Indeed, the royalty terms of a Class II lease are different from those of a Class III lease that BLM issued before August 8, 2005, for which the lessee has converted to the royalty rate or direct use fee terms under 43 CFR 3212.25. In other words, Class III leases have different royalty terms (including direct use fees in lieu of royalties) than Class II leases. Thus, the definition in the proposed rule stating that Class III leases were converted to Class II leases was incorrect.

Accordingly, in the final rule, a Class III lease means:

> A lease that BLM issued before August 8, 2005, for which the lessee has converted to the royalty rate or direct use fee terms under 43 CFR 3212.25.

The lessee of a Class III lease may also elect, under 43 CFR 3200.7(a)(2), to be subject to all of the BLM regulations for leases issued after August 8, 2005.

Definition of Direct Use

Public Comments: One commenter observed that both MMS and BLM have definitions of direct use but defined the term to include ''generation'' in ''slightly different ways.'' The commenter suggested that MMS and BLM agree on one definition.

MMS Response: In section 236 of the EPAct (adding 30 U.S.C. 1001(g)), Congress defined direct use to mean the ''utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs other than the commercial *production* of electricity'' (emphasis added). In the proposed rule, we proposed to use that definition, but substitute the word ''generation'' for ''production'' because Congress did not define the term commercial production of electricity. 71 FR 41518. As we explained in the preamble to the proposed rule:

> Other sections of the EPAct (see the new 30 U.S.C. 1004(b), added by EPAct section 223(a), and new 30 U.S.C. 1003(f), added by EPAct section 223(b)) use the term commercial generation of electricity. The two terms appear from the statutory context to have the same meaning. Therefore, commercial production or generation of electricity would mean generation of electricity that is sold or is subject to sale, including the electricity that is required to convert geothermal energy into electrical energy for sale.

Id. However, as the result of a clerical error, MMS proposed to define the term as only ''the commercial generation of electricity,'' whereas BLM defined it to include ''commercial production or generation of electricity'' (43 CFR 3200.1) (71 FR 41543). To be consistent, we are changing the definition in the final rule to conform to BLM's definition and include the term ''commercial *production* or *generation* of electricity'' (emphasis added).

Definition of Gross Proceeds

Public Comments: As discussed above, the trade association commented that the definition of gross proceeds in 30 CFR 206.351 of the proposed rule should state that ''station usage power (including auxiliary load) and wheeling and transmission charges * * * are not included [in the gross proceeds].''

MMS Response: As discussed above, § 202.351(b)(2) would allow the use of station usage power royalty-free. However, the definition of gross proceeds in our geothermal regulations has never included wheeling and transmission charges as part of gross proceeds. In the 1991 final rule, wheeling and hydrogen sulfide abatement were deleted from the definition ''because these operations are associated with utilization of the geothermal resource rather than production; any reimbursements the lessee receives for these operations

would be deducted from the lessee's costs of performing them when calculating the transmission and generating cost rates under the netback procedure'' (58 FR 57271). In the proposed rule at § 206.352(b)(1), we explained that lessees who are currently using the netback method who choose not to convert to the EPAct royalty terms will continue to be allowed to deduct transmission and generating allowances, including wheeling charges. However, as we explained in the preamble to the proposed rule, such charges are not excluded from the definition of gross proceeds because lessees who do convert to the EPAct royalty terms will have a royalty rate that accounts for the previous transmission and generating deductions in order to remain revenue neutral (71 FR 41519). Therefore, MMS is not changing the definition of gross proceeds in the final rule.

In the final rule, MMS has modified the definition of ''commercial production or generation of electricity'' to clarify that the term includes electricity or energy that is required to produce the resource, as well as that required to convert the resource into electrical energy for sale. This was MMS's intent in the proposed rule. This term is important in determining whether geothermal resource production is subject to royalties or direct use fees, as explained more fully in the preamble to the final BLM rule. The revised definition is consistent with the definition in the BLM final rule.

In the definition of ''plant parasitic electricity'' in the final rule, MMS has specified that it means electricity used to operate a power plant that is used for commercial production or generation of electricity. Plant parasitic electricity does not include electricity generated to power a direct use operation. (The term ''plant parasitic electricity'' is actually used only in 30 CFR 202.351, the provision addressing which geothermal resources are free of royalty and direct use fees. It is not used in part 206. However, it is more efficient to define it in part 206, together with other related terms that are used in both part 206 and part 202, and which part 202 incorporates by reference to the part 206 definitions.)

2. 30 CFR 206.352 How do I calculate the royalty due on geothermal resources used for commercial production or generation of electricity?

Public Comments: One State commented that because paragraphs (b)(2) and (b)(3) do not allow any deductions from gross proceeds, it creates an ambiguity because the definition of gross proceeds in § 206.351 does not also state there are no deductions from gross proceeds. The State also expressed concern that the proposed rules ''appear to imply that royalties can be determined by the 'netback' method for arm's length transactions'' and suggested that we clarify that the ''netback method'' only applies to current leases. One producer commented that it was unsure how to value geothermal production when it is sold directly to the ratepayers. The commenter believes that the only valuation options would be to request an alternative valuation methodology or convert the leases to direct use leases and pay fees in lieu of royalties.

MMS Response: Although lessees may not take deductions from their gross proceeds under paragraphs (b)(2) and (b)(3) of this section, as explained above, in proposed § 206.352(b)(1), lessees who are currently using the netback method who chose not to convert to the EPAct royalty terms will continue to take transmission and generating deductions from their gross proceeds. Therefore, MMS is not changing the definition of gross proceeds in the final rule.

With respect to the comment that the proposed rule implies that the netback calculation applies to royalty calculations for arm's-length transactions, § 206.352(a) clearly states that for geothermal resources purchased ''at arm's length that the purchaser uses to generate electricity, then the royalty on the geothermal resources is the gross proceeds accruing to you from the sale of the geothermal resource to the arm's-length purchaser multiplied by the royalty rate in your lease or that BLM prescribes or calculates under 43 CFR 3211.17.'' Therefore, MMS sees no need for clarification regarding the netback method and arm's-length situations.

With respect to how to value geothermal resources when electricity is sold directly to ratepayers (consumers of the electricity), rather than the typical situation where the lessee sells electricity under an arm's-length contract to a utility, we are assuming that the sales to the ratepayers are also arm's length. We are further assuming that the lessee would have contractual agreements with the ratepayers for the sales of electricity. In that instance, the gross proceeds would be the combination of the sales to multiple ratepayers. The same would hold true if a lessee sold electricity to multiple utilities. Therefore, the lessee would pay under § 206.352(b)(1). Of course, the commenter is correct that the lessee could request a value or gross proceeds methodology under § 206.364. However, the lessee could not convert to a direct use fee lease. The fee schedule is only for direct use of a geothermal resource that is not used for commercial electrical generation purposes.

3. 30 CFR 206.353 How do I determine transmission deductions? and 30 CFR 206.354 How do I determine generating deductions?

Public Comments: One commenter objected to our proposal to amend § § 206.353 and 206.354 by deleting paragraph (f) of those sections. That paragraph provided for a one-time refund of royalties based on the royalty percentage of actual dismantlement costs of transmission lines and power plants in excess of income from salvage at the completion of dismantlement and salvage operations. The commenter stated that the MMS explanation that this provision has never been used did not take into account that geothermal power plants are relatively new and last many years ''such that no plant or transmission line has ever been dismantled.'' The commenter believes that elimination of the refunds would have a ''potentially significant financial impact in the future and remove the incentive intended to ensure such actions are taken * * *.''

MMS Response: With respect to dismantlement costs, the preamble to the existing rule discussed the rationale for allowing a refund:

> The MMS recognizes that the costs of dismantling, decommissioning, or abandoning the power plant and/or transmission line are indeed part of the lessee's costs associated with those facilities. However, these are future costs that are not easily estimated tens of years in advance, and in fact may not even occur at the end of a given project if the facilities are converted to other uses. Nevertheless, it is MMS' intent to recognize power plant and transmission line dismantlement costs when those costs actually occur. This will be accomplished by allowing the lessee a one-time refund of royalty equal to the royalty amount of actual dismantlement costs in excess of actual salvage income (i.e., royalty rate times the amount of dismantlement costs in excess of salvage income) * * * (56 FR 57256, 57263).

As the commenter noted, the main reason this refund has not been used is the lack of geothermal power plant dismantlements. The intent of the proposed rule was not to change the existing regulations substantively so that lessees who stay under the existing regulations will continue paying royalties as they are now. Therefore, MMS is reinstating the dismantlement costs refund as it is in the existing regulations at § § 206.353(f) and 206.354(f), rewritten in plain English.

In the final rule, MMS has changed a provision of § 206.353(b)(1) regarding determination of transmission line costs that corrects an inadvertent inconsistency in both the existing rule and the proposed rule. The existing rule (at § 206.353(b)(1)) and the proposed rule (at § 206.353(b)(1)(ii)) both provide that the lessee must redetermine the transmission line cost rate annually, beginning either at the same month of the year in which the transmission line was placed into service, the same month of the year in which the power plant was placed into service, or at a time coinciding with the beginning of the lessee's annual corporate accounting period. Both the existing rule and the proposed rule then provide that the period selected must be the same period used in redetermining the generating cost rate under § 206.354(b)(1).

However, § 206.354(b)(1) (in both the existing rule and the proposed rule) does not provide an option for redetermining the generating cost rate beginning at the same month of the year in which the transmission line was placed into service. It provides only for either the same month of the year in which the power plant was placed into service or at the beginning of the lessee's annual corporate accounting period. Thus, it is not possible to elect to redetermine the transmission line cost rate beginning at the same month of the year in which the transmission line was placed into service, and no lessee attempted to do so. For these reasons, the final rule eliminates this option.

The proposed rule, at § 206.353(h), provided that to compute depreciation for a transmission line (as part of calculating actual transmission line costs), the lessee could elect to use either a straight-line depreciation method based on the life of the equipment or on the life of the reserves that the transmission line services, or a return on capital investment method. This proposed provision would have changed the requirement in the existing rule (at § 206.353(b)(2)(iv)(A)) to compute depreciation using a straight-line method based on the life of the geothermal project (usually the term of the electricity sales contract) or other depreciation period acceptable to MMS. There was no discussion or explanation of this provision in the preamble to the proposed rule. It is uncertain how the change in language arose, because MMS intended no change in the existing provision.

Further, the proposed rule in the same paragraph omitted language in the existing rule to the effect that a change in ownership of a transmission line does not alter the depreciation schedule established by the original lessee-owner for purposes of determining transmission line costs. Again, MMS intended no change in the existing rule in this regard. Both of these errors are corrected in § 206.353(h) of the final rule.

A similar unexplained change appeared in the depreciation provisions of the proposed rule for calculating generating deductions at § 206.354(h). The proposed rule would have added to the existing rule (at § 206.354(b)(2)(iv)(A)) an option to compute depreciation on a unit-of-production method. This does not appear to be appropriate in the geothermal context. The proposed rule again omitted language in the existing rule regarding a change in ownership of the power plant not altering the original depreciation schedule. Both of these errors have been corrected in the final rule.

4. 30 CFR 206.356 How do I calculate royalty or fees due on geothermal resources I use for direct use purposes?

Public Comments: Two commenters objected to MMS's minor modifications to the fee schedule proposed by the Subcommittee. Specifically, a commenter requested that MMS eliminate the efficiency factor in the denominator of the equation for calculating fees, and one commenter objected to the increase in fees in the proposed schedule from the schedule the Subcommittee recommended. Another commenter stated that, under the proposed rule, a lessee could not produce electricity from a Class III lease.

MMS Response: With respect to the efficiency factor, MMS used the same formula as the Subcommittee, which included the efficiency factor. The Subcommittee used the efficiency factor because:

> Valuation using coal, wood chips, or natural gas is based on ''displaced energy,'' where the binary valuation is based on ''extracted energy.'' Displaced energy uses an efficiency factor to account for heat lost during the combustion of the alternative fuels. The efficiency factor typically adds 25 percent to 33 percent to the value of those fuels.

Royalty Policy Committee Geothermal Valuation Subcommittee Report (May 2005), Attachment 3, page 2.

If we eliminate the efficiency factor from the formula, it would erroneously assume that the use of geothermal resources for direct use purposes is 100 percent efficient. Because the direct use of geothermal energy is not 100 percent efficient, MMS will keep the efficiency factor to account for heat lost during the direct use of geothermal resources.

With respect to the increase in fees in the proposed schedule from the fees in the Subcommittee Report, the Subcommittee recommended using Powder River Basin coal prices to determine what a Btu of heating energy was worth. That measure was to be used in calculating royalty owed on geothermal resources used in direct use projects and not sold. Powder River Basin coal prices had been relatively stable for some time. However, the Subcommittee contemplated that MMS would change the fee schedule from time to time. In the interim between the Subcommittee Report and publication of the proposed rule, Powder River Basin coal prices increased. The MMS believes it is eminently reasonable to update the fee schedule to reflect current coal prices, rather than past prices. Thus, we will retain the proposed fee schedule.

It is possible that a lessee of a geothermal lease may use the geothermal resource first to produce electricity and then either sell or use the still-hot water for direct use in another operation. (This is sometimes known as ''cascading.'') Cascading is a process in which the user gains the use of the heat after its use by the same or a different party who is using the higher-grade geothermal resource to generate electricity. As we stated in the preamble to the final 1991 geothermal rule, ''the issue of royalties due on geothermal resources utilized in cascading steps is straightforward: the lessee is responsible for paying royalty on the total thermal energy yielded by the resource'' (56 FR 57268). The MMS believes that this philosophy also is consistent with the intent of Congress in the EPAct.

The MMS knows of two operations that involved ''cascading'' in the past, but there appears to be no current operation that involves a second use of the resource after commercial generation of electricity. Nevertheless, such a situation may arise again in the future, and MMS therefore has addressed this issue here.

Thus, for example, assume that the lessee uses the geothermal resource to generate electricity. Also assume that the lessee then uses the still-hot geothermal resource, after it is used in the plant for electrical generation, in a direct use operation. In that instance, as with the existing regulations, under this rule, the lessee of a Class I lease would have to pay royalties on both the direct use and electrical generation. For Class II and Class III leases, the lessee would have to pay royalties on the gross proceeds derived from commercial

electrical generation and fees for the direct use. MMS has added language to § 202.351(b)(1) to clarify this principle.

5. 30 CFR 206.357 How do I calculate royalty due on byproducts?

Public Comments: We received one comment that the rule is contrary to the EPAct because it requires that royalties be paid on byproducts other than those named under the EPAct.

MMS Response: In the EPAct, for new leases, Congress changed the byproducts upon which royalties are due, to include ''any mineral or minerals specified in the Mineral Leasing Act, 30 U.S.C. 181'' (30 U.S.C. 1004(a)(2)). Therefore, we agree that, although Congress did not change the definition of ''byproduct,'' in 30 U.S.C. 1001, it did provide that under leases issued under the EPAct royalties are due only on those byproducts that also are minerals identified in § 181, i.e. phosphate, sodium, and potassium. We refer you to the BLM regulations at 43 CFR 3211.19(a), which incorporate this change.

We also revised § 206.357 in the final rule to separate the introductory language in the proposed rule into two paragraphs and clarify that royalty is due on those byproducts that are royalty-bearing under the lease terms of Class I leases and of Class III leases that do not elect to convert to all of the regulations promulgated in the final BLM rule for leases issued after August 8, 2005. Conversion of a Class I lease to a Class III lease (conversion of the royalty terms) does not by itself modify the lease terms pertaining to byproducts. However, the BLM rule at 43 CFR 3200.7(a)(2) allows a lessee who does convert the royalty terms of a Class I lease an additional option to also convert all other terms, which would include the provisions regarding byproducts. Thus, some Class III leases may retain the original lease terms regarding byproducts, while others will effectively convert to the EPAct byproduct terms.

For Class II leases and those Class III leases that do elect to convert to all the terms of the BLM rule for leases issued after August 8, 2005, royalty is due under 30 U.S.C. 1004(a)(2) on those byproducts that are identified in 30 U.S.C. 181.

There is one geothermal lessee of a Class I lease who has paid royalty on sulfur as a byproduct in the past. No lessee has paid royalty on any byproducts for more than two years.

Though theoretically possible, MMS believes that it is extremely unlikely that phosphate, sodium, or potassium will be produced as a byproduct of geothermal hot water or steam. To MMS' knowledge, there are no instances of commercially viable production of such byproducts in the past. MMS therefore does not expect any significant production of any royalty-bearing byproducts from Class II leases or from Class III leases that convert all their terms to the new rule.

6. 30 CFR 206.359 How do I determine byproduct transportation allowances?

The proposed rule at § 206.359(h) provided that in computing depreciation, the lessee may elect to use either a straight-line method based on the life of the transportation system, the life of the reserves which the transportation system services, or a unit-of-production method. This would have changed the option in the existing rule (at § 206.358(b)(2)(iv)(A)) to use either a straight-line method based on the life of equipment or the life of the geothermal project that the transportation system services. As with the other depreciation provisions discussed above, there was no explanation of this proposed change in the preamble. MMS again does not intend a change to the meaning of the existing rule. The proposed rule (as with the other provisions) also omitted language regarding a change in ownership of the transportation system not altering the depreciation schedule established by the original lessee-owner. Both of these errors have been corrected in § 206.359(h) of the final rule.

MMS does not expect wide applicability of these provisions in view of the fact that no lessees currently are reporting royalties on byproducts or byproduct transportation allowances. Nevertheless, these provisions may become applicable in the future, and the final rule should not create unnecessary confusion. It is therefore appropriate to make the corrections described above.

C. 30 CFR Part 217—Audits and Inspections, Subpart H—Geothermal Resources

Although the regulatory text of part 217 was omitted from the proposed rule, an opportunity for public comment was provided in the preamble discussion, including the information collection requirements. No comments were received regarding part 217, which contains technical, noncontroversial audit information. The regulatory text of part 217 is included in this final rule.

D. 30 CFR Part 218—Collection of Royalties, Rentals, Bonuses and Other Monies Due the Federal Government, Subpart F—Geothermal Resources

1. 30 CFR 218.303 May I credit rental towards royalty?

Public Comments: We received one comment stating that the proposed rule's requirement that the credit be taken ''only in the year paid-goes beyond the law, is too strict, and will have the unforeseen consequence of imposing financial burdens when companies can least afford additional costs.''

MMS Response: In section 230 of the EPAct, Congress added a new 30 U.S.C. 1004(e) that authorized lessees to credit ''*[a]ny annual rental* under this section that is paid with respect to a lease before the first day *of the year for which the annual rental is owed shall be credited to the amount of royalty* that is required to be paid under the lease for that year'' (emphasis added). We think it is clear from the language of the EPAct that lessees may credit annual rental paid in a particular year only to royalties paid ''that year.'' Thus, Congress, not MMS, has directed that credits for rentals paid be restricted to the year for which they are paid. Any other construction is contrary to the statute's plain language.

Title 30 U.S.C. 1004(e), as added by section 230 of the EPAct, provides that ''[a]ny annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed shall be credited to the amount of royalty that is required to be paid under the lease for that year.'' It is apparent that Congress intended this provision to apply to post-EPAct leases. It is only under section 1004(a)(3), as added by the EPAct, that a lessee must continue to pay annual rental regardless of whether the lease is in production. Under the terms of pre-EPAct leases, rental ceases when the lease goes into production (and the lease is then subject to minimum royalty).

Thus, the rental crediting provision will apply to Class II leases, as defined in 30 CFR 206.351. In addition, Class III leases as defined in that section may elect to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005, under 43 CFR 3200.7(a)(2). That election would operate to convert the rental terms to EPAct terms. Crediting annual rental against royalty therefore should apply to those leases as well. Class III leases that do not elect to be subject to all of the regulations promulgated for post-EPAct leases will retain their existing rental terms. The crediting provision therefore

should not apply to those Class III leases. MMS has revised the language of § 218.303(a) in the final rule to clarify this principle.

2. 30 CFR 218.304 May I credit rental towards direct use fees?

Public Comments: We received three comments urging that lessees who pay fees under direct use leases should be allowed to credit rental towards fees because the commenters believe ''fees'' are ''royalties.'' One commenter alleged that payment of the fees and rental would increase monies paid the Government for direct use to ten times that paid for electricity. Another commenter stated that collecting fees and rentals for direct use is contrary to the ''intent of the EPAct where the agency is directed to encourage direct use of geothermal resources.''

MMS Response: In section 223 of the EPAct, Congress added a new 30 U.S.C. 1004(b) that directed the Secretary to ''establish a schedule of fees, *in lieu of royalties*'' (emphasis added). ''In lieu of'' means ''instead of; in place of; in substitution of.'' It does not mean ''in addition to.'' Black's Law Dictionary 787 (6th ed. 1990). Thus, the plain language of the EPAct makes it clear that ''fees'' are not ''royalties.'' In 30 U.S.C. 1004(e) (added by section 230 of the EPAct), Congress authorized lessees to credit ''[a]ny annual rental under this section that is paid with respect to a lease before the first day of the year for which the annual rental is owed will be credited to the amount of *royalty* that is required to be paid under the lease for that year'' (emphasis added). Therefore, the MMS correctly concluded that rentals could not be credited towards fees because fees are not royalties.

With respect to the concerns that payment of fees and rentals will increase direct use lease payment to ten times that of those for electricity and is contrary to the EPAct, MMS can find no support for that position. As we stated in the preamble to the proposed rule, for commercial generation of electricity, ''[b]ecause the EPAct mandates that the royalty revenues received by MMS should be the same as what would have been received under the valuation methods of the current regulations, there would be no revenue impact for electrical generation projects'' (71 FR 41523). Direct use projects are paying substantially less under the EPAct than under the old rules. As stated in the preamble to the proposed rule, for direct use projects:

> Current direct use lessees who do not sell the geothermal resources would have the option to convert their leases to the new fee schedule, which would result in a reduction of $60,000 per year from the current level of royalties, a 95-percent reduction. In addition, all new direct use lessees who do not sell the geothermal resources under the new regulations would use the same fee schedule, also paying about 95 percent less than they would have under the current regulations.

71 FR 41524. With a 95-percent reduction in payments made under a direct use lease, it is not possible that payment of rentals would increase revenues paid on a lease to ten times the royalty paid on geothermal resources used in electrical generation plants, whose payments remain the same.

For example, assume a lessee has a 1,000-acre pre-EPAct direct use lease and was paying an average of $15,000 per year in royalties. Because royalties would exceed the $2,000 in rentals for any year ($2x1,000 acres), the lessee would owe no rentals. Therefore, the lessee's total lease payments would be $15,000. However, if the lessee converted to the EPAct's fee terms, the lessee would owe only $750 in fees (a 95% reduction) and $5,000 in rental ($5x1,000 acres) for a combined annual payment of $5,750. The $5,750 is only 38 percent of what the lessee was paying prior to conversion. Thus, we believe a 62-percent decrease in monies paid on a lease does encourage the direct use of geothermal resources and ensures a ''fair return to the United States for use of the resource'' 30 U.S.C. 1004(b).

3. 30 CFR 218.305 How do I pay advanced royalties I owe under BLM regulations?

The new section 5(f) of the Geothermal Steam Act (30 U.S.C. 1004(f)), added by the EPAct, provides that a lease will remain in force notwithstanding a cessation of production if, during the period in which production is ceased, ''the lessee pays royalty in advance at the monthly average rate at which royalty was paid during the period of production.'' We have added language to § 218.305 to clarify that you must calculate the average monthly royalty by including the amount against which you applied the annual rental as a credit. Under § 218.303, the annual rental may be credited against the advanced royalty due, and we have added specific language in § 218.303(a)(2) in the final rule to effect that result. Thus, both royalty and advanced royalty will be treated identically for purposes of crediting annual rental.

4. 30 CFR 218.306 May I receive a credit against production royalties for in-kind deliveries of electricity I provide under contract to a State or county government?

This provision implements the new 30 U.S.C. 1004(d), added by EPAct section 224. The maximum credit for the value of the electricity provided to a State or county government is the share of royalty payments that the State or county would receive under the permanent indefinite appropriation established by 30 U.S.C. 1019, as amended by EPAct section 224(b). Under section 1004(d)(3), the electricity delivered will serve as the payment of the State's or county's share. The preamble to the proposed rule gave an hypothetical example of the operation of this provision as follows:

> For example, assume that you have a geothermal lease in New Mexico and that you delivered 10,000 megawatt-hours of electricity in a month to New Mexico under a contract MMS approved. Furthermore, assume that the wholesale value of megawatt-hours in the area where your lease is located is $30.00 per megawatt-hour that month. If you had paid royalties in money on the basis of that wholesale value, and further assuming that you have a Class I lease with a 10-percent royalty rate, you would have paid $30,000 to MMS. The MMS then would have paid 50 percent of that amount ($15,000) to the State of New Mexico. You would be entitled to a credit of $15,000 against the amount you would otherwise owe to MMS when royalty is calculated on that basis. You would have to pay the remaining $15,000 to MMS in money.

71 FR 41523. The last sentence of this explanation inadvertently overlooked explaining one further consequence of this provision, which we explain here for purposes of clarity.

Under 30 U.S.C. 1019, the State in which a lease is located receives 50 percent of the royalties paid to the United States, the county receives 25 percent, and 25 percent is deposited to miscellaneous receipts in the Treasury. When the lessee delivers the electricity in kind and takes the credit against royalties of $15,000, the in-kind delivery serves as payment of the State's 50 percent share under 30 U.S.C. 1019. The royalty paid in money therefore is divided evenly between the county and the Treasury.

Under the hypothetical as stated, for the lessee to claim the $15,000 credit against royalties, it would have to deliver $15,000 worth of electricity (which would equal 500 megawatt-hours in this example) in kind to New Mexico. If it did, instead of realizing $300,000 from the sale of all 10,000 megawatt-hours, the lessee would

realize $285,000 from the sale of 9,500 megawatt-hours and no money for the in-kind delivery of the 500 megawatt-hours. The royalty owed in money under this lease, before application of the credit, would be $28,500.

In the hypothetical, the lessee would apply the $15,000 credit against royalties to the $28,500 it would owe in money, and would actually pay $13,500. That amount would be distributed 50 percent to the county and 50 percent to the Treasury—in this case, $6,750 to each. In contrast, if no electricity had been delivered in kind and the lessee had paid $30,000 as royalty in money, the State of New Mexico would have received $15,000, the county in which the lease is located would have received $7,500, and the Treasury would have received the remaining $7,500. Thus, use of the in-kind credit results in a slight adverse monetary consequence to the county and the Federal government. This hypothetical illustrates that use of the in-kind credit reduces not only the royalty paid to the United States as a result of the credit but also reduces the lessee's proceeds on which royalty is calculated.

In the final rule, MMS has also made several changes from the proposed rule to eliminate duplicative language, clarify potential ambiguities, and express provisions in plainer English. None of those changes effects any change in substantive meaning.

III. Procedural Matters

1. Effective Date

This rule becomes effective 30 days following publication, rather than 60 days, because the Department and the geothermal industry are interested in having competitive geothermal lease sales as soon as possible. Lease sales cannot be held until both the BLM and MMS final rules become effective because it is these rules that prescribe key terms and conditions of new leases. The Department intends for both the BLM and MMS rules to become effective simultaneously.

2. Summary Cost and Royalty Impact Data

Of the changes to the geothermal valuation regulations outlined above, only a few will have a royalty impact on industry, States, or the Federal Government. This section addresses those changes and discusses the extent of their impacts. There are no ''Costs and Benefits,'' under the meaning identified by the Office of Management and Budget (OMB), as a result of this rule. However, there are certain estimated royalty effects of this rule to all potentially affected groups: industry, States and local governments, and the Federal Government. These are summarized below. There are no significant associated costs to industry of administering this rule. The Federal government will incur some minimal costs associated with systems changes.

Of the changes that have royalty cost impacts, three will result in royalty decreases for industry, States, and MMS. One will result in an increase to the counties with producing Federal geothermal leases. The net impact of the six changes will result in an expected overall royalty revenue decrease of $4,101,583 to the Federal Government, a corresponding increase to counties of $4,071,583, and a decrease of $30,000 in royalties to the States.

We have evaluated potential effects on federally recognized Indian tribes and have determined that the changes in this rule for Federal leases would not apply to and currently would not have an impact on Indian leases. In addition, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

A. Industry

(1) Royalty Impacts

(a) No Change in Royalties—Electrical Generation

Because the EPAct mandates that the level of royalty revenues received by MMS should be the same over a 10-year period as what would have been received under the valuation methods of the existing regulations, there are no significant overall revenue impacts for electrical generation projects. Electrical generation lessees that remain under the existing regulations will pay royalties on the same basis as they did before this final rule. And, while electrical generation lessees that modify their leases to the new regulations will change to the percentage of gross proceeds method, the level of royalties they pay will not differ significantly from the royalties paid under the existing regulations. New lessees' royalty rates are determined by BLM, which may cause some difference in royalty payments by individual lessees, but which should result in the same overall level of royalties for 10 years under this final rule as they would have paid under the existing regulations.

(b) Net Decrease in Royalties—Direct Use—Estimated at $60,000

Current direct use lessees who do not sell the geothermal resources have the option to convert their leases to the new fee schedule, which MMS anticipates will result in a reduction of $60,000 per year from the current level of royalties, a 95-percent reduction. In addition, all new direct use lessees who do not sell the geothermal resources under the new regulations use the same fee schedule, also paying about 95 percent less than they would have under the existing regulations.

(2) Administrative Costs

The MMS has determined that there are no significant expected administrative cost changes.

B. State and Local Governments

(1) Royalty Impacts—State Governments

(a) Net Decrease in Royalties—Direct Use—Estimated at $30,000

The MMS estimates that States impacted by this rule will receive the same royalties as they currently receive for electrical generation leases without significant variation. However, because of the 95-percent decrease in revenue collected from direct use leases, States that receive a share of that revenue under 30 U.S.C. 191 will be impacted by the revenue decrease. It is unknown how this will affect the counties because the States distribute royalty revenues to their counties directly without MMS involvement. The new fee schedule will result in approximately a 95-percent reduction in royalties paid to States from direct use projects. The MMS estimates the reduction to be $30,000 per year. This amount is based on the difference between the average of direct use royalties paid for fiscal years 2001 through 2005 and the revenues to be collected using the new fee schedule.

(2) Administrative Costs—State Governments

The MMS has determined that there are no expected administrative cost changes for State governments.

(3) Royalty Impacts—Local Governments

(a) Net Increase in Royalties—Estimated at $4,071,583

The EPAct (30 U.S.C. 1019, as amended by section 224(b) of the EPAct) mandates a new distribution of 25 percent of royalties, rentals, bonuses, and other revenues to the counties. This 25 percent cuts the Federal share in half from 50 percent to 25 percent and leaves the States' share as 50 percent. The counties will receive a new 25-percent distribution of total geothermal royalty revenue under the EPAct, which increases their revenues by an estimated $4,071,583 per year (25 percent of the average total geothermal royalties of $16,286,334 paid for fiscal years 2001

through 2005) from the Federal Government.

Prior to the EPAct, MMS distributed 50 percent of the geothermal royalties to the States and retained 50 percent for the Federal Government. The EPAct now mandates that MMS directly distribute 25 percent of geothermal royalties to the counties that contain producing geothermal Federal leases. This 25-percent county share is taken from the Federal share, cutting it in half, to 25 percent of the total geothermal royalties. The State distribution of 50 percent remains unchanged under the EPAct.

(4) Administrative Costs—Local Governments

This rule does not impose any additional burden on local governments. The counties where geothermal facilities are located on Federal leases will receive a new distribution of 25 percent of the total geothermal royalties for the first time directly from the Federal Government, whereas in the past it was left up to the States to distribute geothermal royalty revenues to the counties should the respective States choose to do so. It is not known exactly how much geothermal royalty revenue is distributed to counties by the States, as it is up to each State to do this distribution and is not currently under MMS control.

C. Federal Government

The total combined estimated royalty impact on the Federal Government will be a decrease of $4,101,583 ($4,071,583 (25 percent of the average total geothermal royalties of $16,286,334 paid for fiscal years 2001 through 2005) for electrical generation and $30,000 for direct use).

(1) Royalty Impacts

(a) Net Decrease in Royalties—Electrical Generation—Estimated at $4,071,583

The Federal Government will be impacted by a net overall decrease in royalties as a result of the changes to the regulations governing the new distribution of 25 percent of total royalties to the counties and the new direct use fee schedule. The net impact on the Federal Government will be a decrease of approximately $4,071,583 for electrical generation.

(b) Net Decrease in Royalties—Direct Use—Estimated at $30,000

The Federal Government will also be impacted by the 95-percent decrease in revenues from direct use leases due to the direct use fee schedule. The MMS estimates the reduction to be $30,000 per year. This amount is based on the difference between the average of direct use royalties paid for fiscal years 2001 through 2005 and the revenues to be collected using the new fee schedule.

(2) Administrative Costs—Federal Government

The MMS does not expect any administrative cost changes for the Federal Government.

D. Summary of Costs and Royalty Impacts to Industry, State and Local Governments, and the Federal Government

In the table below, a negative number means a reduction in payment or receipt of royalties or a reduction in costs. A positive number means an increase in payment or receipt of royalties or an increase in costs. The net expected change in royalty impact is the sum of the royalty increases and decreases. If no costs are represented for administrative or royalty impacts, then the increase, decrease, and net values impacts are all zero.

SUMMARY OF EXPECTED COSTS AND ROYALTY IMPACTS

Description	Costs and royalty increases or royalty decreases	
	First year	Subsequent years
A. Industry		
Royalty Decrease from Direct Use Fee Schedule	-$60,000	-60,000
Net Expected Change in Royalty (direct use fee) Payments from Industry	-60,000	-60,000
B. State and Local Governments		
State:		
Royalty Decrease to State Governments	-30,000	-30,000
Local Governments (counties):		
Royalty Increase to counties	+4,071,583	+4,071,583
Net Expected Change in Royalty Payments to State and Local Governments	+4,041,583	+4,041,583
C. Federal Government		
Royalty Decrease from 25 percent Royalty Disbursement to Counties	-4,071,583	-4,071,583
Royalty Decrease from New Direct Use Fee Schedule Implementation	-30,000	-30,000
Net Expected Change in Royalty Payments to Federal Government	-4,101,583	-4,101,583

3. Regulatory Planning and Review, Executive Order 12866

In accordance with Executive Order 12866, the OMB has determined that this rule is not a significant regulatory action.

a. This rule will not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of Government.

b. This rule will not create inconsistencies with other agencies' actions.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues.

4. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial

Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Fairness Act (SBREFA)

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 or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

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.

6. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. Therefore, a Small Government Agency Plan is not required.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it will not be a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The analysis prepared for Executive Order 12866 and found earlier in this preamble explains that the economic impact of this rule will be well below $100 million per year.

7. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

8. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this rule does not have federalism implications; hence, a federalism assessment is not required. It will not substantially and directly affect the relationship between the Federal and State governments. The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal geothermal leases are shared with State and county governments on a percentage basis as prescribed by law. This rule does not alter any lease management responsibilities. It pertains to royalty and fees computation only. This rule will not impose costs on States or localities.

9. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995 (PRA)

The OMB has approved a new collection of information contained in this rule. The title of the new information collection request (ICR) is ''30 CFR Parts 202, 206, 210, 217, and 218—Valuation of Geothermal Resources.'' The total hour burden is 174 hours, which is approved under OMB Control Number 1010–0169 (expires August 31, 2009). The information is collected on Form MMS–2014, Report of Sales and Royalty Remittance, which is approved under OMB Control Number 1010–0140 (expires November 30, 2009).

We received comments from industry on the rule, but there were no changes in the information collection from the proposed rule to the final rule. We will use the information collected to ensure that proper royalty is paid on all geothermal resources produced from Federal leases.

Submit written comments on the accuracy of this burden estimate or suggestions on reducing the burden to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, W. 6th Ave. and Kipling Blvd., Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB control number in the ''Attention'' line of your comment. Also include your name and return address. If you do not receive a confirmation that we have received your e-mail, contact Sharron Gebhardt at (303) 231–3211. 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.

11. National Environmental Policy Act (NEPA)

This rule deals with financial matters and will have no direct effect on MMS decisions on environmental activities. Pursuant to 516 DM 2.3A (2), Section 1.10 of 516 DM 2, Appendix 1, excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines 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 be subject later to the NEPA process, either collectively or case-by-case.'' Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process. No exception to the categorical exclusion applies.

12. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and Department Manual 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes. This rule does not apply to Indian leases.

13. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation does not have a significant adverse effect on the Nation's energy supply, distribution, or use. The changes primarily involve royalty valuation of geothermal production to simplify royalty valuation, hence, any impact to the way industry does business should be positive, and, as the EPAct directs, should encourage energy development and marketing. This rule does not otherwise impact energy supply, distribution, or use.

14. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

In accordance with Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Parts 202, 206, 210, 217, and 218

Geothermal, valuation, royalty, Energy Policy Act of 2005, direct use, arm's length.

Dated: April 19, 2007.

Mike Olsen,

Deputy Assistant Secretary for Land and Minerals Management.

■ For the reasons stated in the preamble, the Minerals Management Service is amending 30 CFR parts 202, 206, 210, 217, and 218 as set forth below:

PART 202—ROYALTIES

■ 1. The authority for part 202 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*, 1801 *et seq.*

Subpart H-Geothermal Resources

■ 2. Revise § 202.351 to read as follows:

§ 202.351 Royalties on geothermal resources.

(a)(1) Royalties on geothermal resources, including byproducts, or on electricity produced using geothermal resources, will be at the royalty rate(s) specified in the lease, unless the Secretary of the Interior temporarily waives, suspends, or reduces that rate(s). Royalties are determined under 30 CFR part 206, subpart H.

(2) Fees in lieu of royalties on geothermal resources are prescribed in 30 CFR part 206, subpart H.

(3) Except for the amount credited against royalties for in-kind deliveries of electricity to a State or county under § 218.306, you must pay royalties and direct use fees in money.

(b)(1) Except as specified in paragraph (b)(2) of this section, royalties or fees are due on—

(i) All geothermal resources produced from a lease and that are sold or used by the lessee or are reasonably susceptible to sale or use by the lessee, or

(ii) All proceeds derived from the sale of electricity produced using geothermal resources produced from a lease.

(2) For purposes of this subparagraph, the terms ''Class I lease,'' ''Class II lease,'' and ''Class III lease'' have the same meanings prescribed in 30 CFR 206.351.

(i) For Class I leases, MMS will allow free of royalty—

(A) Geothermal resources that are unavoidably lost or reinjected before use on or off the lease, as determined by the Bureau of Land Management (BLM), or that are reasonably necessary to generate plant parasitic electricity or electricity for Federal lease operations; and

(B) A reasonable amount of commercially demineralized water necessary for power plant operations or otherwise used on or for the benefit of the lease.

(ii) For Class II and Class III leases where the lessee uses geothermal resources for commercial production or generation of electricity, or where geothermal resources are sold at arm's length for the commercial production or generation of electricity, MMS will allow free of royalty or direct use fees geothermal resources that are:

(A) Unavoidably lost or reinjected before use on or off the lease, as determined by BLM;

(B) Reasonably necessary for the lessee to generate plant parasitic electricity or electricity for Federal lease operations, as approved by BLM; or

(C) Otherwise used for Federal lease operations related to commercial production or generation of electricity, as approved by BLM.

(iii) For Class II and Class III leases where the lessee uses the geothermal resources for a direct use or in a direct use facility, as defined in 30 CFR 206.351, resources that are used to generate electricity for Federal lease operations or that are otherwise used for Federal lease operations are subject to direct use fees, except for geothermal resources that are unavoidably lost or reinjected before use on or off the lease, as determined by BLM.

(3) Royalties on byproducts are due at the time the recovered byproduct is used, sold, or otherwise finally disposed of. Byproducts produced and added to stockpiles or inventory do not require payment of royalty until the byproducts are sold, utilized, or otherwise finally disposed of. The MMS may ask BLM to increase the lease bond to protect the lessor's interest when BLM determines that stockpiles or inventories become excessive.

(c) If BLM determines that geothermal resources (including byproducts) were avoidably lost or wasted from the lease, or that geothermal resources (including byproducts) were drained from the lease for which compensatory royalty (or compensatory fees in lieu of compensatory royalty) are due, the value of those geothermal resources, or the royalty or fees owed, will be determined under 30 CFR part 206, subpart H.

(d) If a lessee receives insurance or other compensation for unavoidably lost geothermal resources (including byproducts), royalties at the rates specified in the lease (or fees in lieu of royalties) are due on the amount of, or as a result of, that compensation. This paragraph will not apply to compensation through self-insurance.

■ 3. Revise § 202.353 to read as follows:

§ 202.353 Measurement standards for reporting and paying royalties and direct use fees.

(a) For geothermal resources used to generate electricity, you must report the quantity on which royalty is due on Form MMS–2014 (Report of Sales and Royalty Remittance) as follows:

(1) For geothermal resources for which royalty is calculated under § 206.352(a), you must report quantities in:

(i) Thousands of pounds to the nearest whole thousand pounds if the contract for the geothermal resources specifies delivery in terms of weight; or

(ii) Millions of Btu to the nearest whole million Btu if the sales contract for the geothermal resources specifies delivery in terms of heat or thermal energy.

(2) For geothermal resources for which royalty is calculated under § 206.352(b), you must report the quantities in kilowatt-hours to the nearest whole kilowatt-hour.

(b) For geothermal resources used in direct use processes, you must report the quantity on which a royalty or direct use fee is due on Form MMS–2014 in:

(1) Millions of Btu to the nearest whole million Btu if valuation is in terms of heat or thermal energy used or displaced;

(2) Millions of gallons to the nearest million gallons of geothermal fluid produced if valuation or fee calculation is in terms of volume;

(3) Millions of pounds to the nearest million pounds of geothermal fluid produced if valuation or fee calculation is in terms of mass; or

(4) Any other measurement unit MMS approves for valuation and reporting purposes.

(c) For byproducts, you must report the quantity on which royalty is due on Form MMS–2014 consistent with MMS-established reporting standards.

(d) For commercially demineralized water, you must report the quantity on which royalty is due on Form MMS–

2014 in hundreds of gallons to the nearest hundred gallons.

(e) You need not report the quality of geothermal resources, including byproducts, to MMS. However, you must maintain quality measurements for audit purposes. Quality measurements include, but are not limited to:

(1) Temperatures and chemical analyses for fluid geothermal resources; and

(2) Chemical analyses, weight percent, or other purity measurements for byproducts.

PART 206—PRODUCT VALUATION

■ 4. The authority for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*, 1801 *et seq.*

■ 5. Revise subpart H to read as follows:

Subpart H—Geothermal Resources

Sec.
206.350 What is the purpose of this subpart?
206.351 What definitions apply to this subpart?
206.352 How do I calculate the royalty due on geothermal resources used for commercial production or generation of electricity?
206.353 How do I determine transmission deductions?
206.354 How do I determine generating deductions?
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206.356 How do I calculate royalty due on geothermal resources I use for direct use purposes?
206.357 How do I calculate royalty due on byproducts?
206.358 What are byproduct transportation allowances?
206.359 How do I determine byproduct transportation allowances?
206.360 What records must I keep to support my calculations of royalty or fees under this subpart?
206.361 How will MMS determine whether my royalty or direct use fee payments are correct?
206.362 What are my responsibilities to place production into marketable condition and to market production?
206.363 When is an MMS audit, review, reconciliation, monitoring, or other like process considered final?
206.364 How do I request a value or gross proceeds determination?
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206.366 What is the nominal fee that a State, tribal, or local government lessee must pay for the use of geothermal resources?

Subpart H—Geothermal Resources

§ 206.350 What is the purpose of this subpart?

(a) This subpart applies to all geothermal resources produced from Federal geothermal leases issued pursuant to the Geothermal Steam Act of 1970 (GSA), as amended by the Energy Policy Act of 2005 (EPAct) (30 U.S.C. 1001 *et seq.*). The purpose of this subpart is to prescribe how to calculate royalties and direct use fees for geothermal production.

(b) The MMS may audit and adjust all royalty and fee payments.

(c) In some cases, the regulations in this subpart may be inconsistent with a statute, settlement agreement, written agreement, or lease provision. If this happens, the statute, settlement agreement, written agreement, or lease provision will govern to the extent of the inconsistency. For purposes of this paragraph, the following definitions apply:

(1) ''Settlement agreement'' means a settlement agreement between the United States and a lessee resulting from administrative or judicial litigation.

(2) ''Written agreement'' means a written agreement between the lessee and the MMS Director or Assistant Secretary, Land and Minerals Management of the Department of the Interior that:

(i) Establishes a method to determine the royalty from any lease that MMS expects at least would approximate the value or royalty established under this subpart; and

(ii) Includes a value or gross proceeds determination under § 206.364 of this subpart.

§ 206.351 What definitions apply to this subpart?

For purposes of this subpart, the following terms have the meanings indicated.

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of 10 through 50 percent of the voting securities, or instruments of ownership, or other forms of ownership of another person, MMS will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership: the percentage of ownership or common ownership, the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons, whether a person is the greatest single owner, or whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, pipeline, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, pipeline, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

Allowance means a deduction in determining value for royalty purposes.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted in accordance with generally accepted accounting and auditing standards, of royalty or fee payment compliance activities of lessees or other interest holders who pay royalties, fees, rents, or bonuses on Federal geothermal leases.

Byproducts means minerals (exclusive of oil, hydrocarbon gas, and helium), found in solution or in association with geothermal steam, that no person would extract and produce by themselves because they are worth less than 75 percent of the value of the geothermal steam or because extraction and production would be too difficult.

Byproduct recovery facility means a facility where byproducts are placed in marketable condition.

Byproduct transportation allowance means an allowance for the reasonable, actual costs of moving byproducts to a point of sale or delivery off the lease, unit area, or communitized area, or away from a byproduct recovery facility. The byproduct transportation allowance does not include gathering costs. You must report a byproduct transportation

allowance as a separate discrete field on the Form MMS–2014.

Class I lease means:

(1) A lease that BLM issued before August 8, 2005, for which the lessee has not converted the royalty rate terms under 43 CFR 3212.25; or

(2) A lease that BLM issued in response to an application that was pending on August 8, 2005, for which the lessee has not made an election under 43 CFR 3200.8(b).

Class II lease means:

A lease that BLM issued after August 8, 2005, except for a lease issued in response to an application that was pending on August 8, 2005, for which the lessee does not make an election under 43 CFR 3200.8(b).

Class III lease means:

A lease that BLM issued before August 8, 2005, for which the lessee has converted to the royalty rate or direct use fee terms under 43 CFR 3212.25.

Commercial production or generation of electricity means generation of electricity that is sold or is subject to sale, including the electricity or energy that is reasonably required to produce the resource used in production of electricity for sale or to convert geothermal energy into electrical energy for sale.

Contract means any oral or written agreement, including amendments or revisions thereto, between two or more persons and enforceable by law that with due consideration creates an obligation.

Deduction means a subtraction the lessee uses to determine the value of geothermal resources produced from a Class I lease that the lessee uses to generate electricity.

Delivered electricity means the amount of electricity in kilowatt-hours delivered to the purchaser.

Direct use means the utilization of geothermal resources for commercial, residential, agricultural, public facilities, or other energy needs, other than the commercial production or generation of electricity.

Direct use facility means a facility that uses the heat or other energy of the geothermal resource for direct use purposes.

Electrical facility means a power plant or other facility that uses a geothermal resource to generate electricity.

Field means the land surface vertically projected over a subsurface geothermal reservoir encompassing at least the outermost boundaries of all geothermal accumulations known to be within that reservoir. Geothermal fields are usually given names and their official boundaries are often designated by regulatory agencies in the respective States in which the fields are located.

Gathering means the movement of lease production from the wellhead to the point of utilization.

Generating deduction means a deduction for the lessee's reasonable, actual costs of generating plant tailgate electricity.

Geothermal resources means:

(1) All products of geothermal processes, including indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproducts.

Gross proceeds (for royalty payment purposes) means the total monies and other consideration accruing to a geothermal lessee for the sale of electricity or geothermal resource. Gross proceeds includes, but is not limited to:

(1) Payments to the lessee for certain services such as effluent injection, field operation and maintenance, drilling or workover of wells, or field gathering to the extent that the lessee is obligated to perform such functions at no cost to the Federal Government;

(2) Reimbursements for production taxes and other taxes. Tax reimbursements are part of gross proceeds accruing to a lessee even though the Federal royalty interest may be exempt from taxation; and

(3) Any monies and other consideration, including the forms of consideration identified in this paragraph, to which a lessee is contractually or legally entitled but which it does not seek to collect through reasonable efforts.

Lease means a geothermal lease issued under the authority of the GSA, unless the context indicates otherwise.

Lessee (you) means any person to whom the United States issues a geothermal lease, and any person who has been assigned an obligation to make royalty, fee, or other payments required by the lease. This includes any person who has an interest in a geothermal lease as well as an operator or payor who has no interest in the lease but who has assumed the royalty, fee, or other payment responsibility. This also includes any affiliate of the lessee that uses the geothermal resource to generate electricity, in a direct use process, or to recover byproducts, or any affiliate that sells or transports lease production.

Marketable condition means lease products that are sufficiently free from impurities and otherwise in a condition that they will be accepted by a purchaser under a sales contract typical for the disposition from the field or area of such lease products.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Plant parasitic electricity means electricity used to operate a power plant that is used for commercial production or generation of electricity.

Plant tailgate electricity means the amount of electricity in kilowatt-hours generated by a power plant exclusive of plant parasitic electricity, but inclusive of any electricity generated by the power plant and returned to the lease for lease operations. Plant tailgate electricity should be measured at, or calculated for, the high voltage side of the transformer in the plant switchyard.

Point of utilization means the power plant or direct use facility in which the geothermal resource is utilized.

Public purpose means a program carried out by a State, tribal, or local government for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety or welfare, other than the commercial generation of electricity. Use of lands or facilities for habitation, cultivation, trade or manufacturing is permissible only when necessary for and integral to (i.e., an essential part of) the public purpose.

Public safety or welfare means a program carried out or promoted by a public agency for public purposes involving, directly or indirectly, protection, safety, and law enforcement activities, and the criminal justice system of a given political area. Public safety or welfare may include, but is not limited to, programs carried out by:

(1) Public police departments;

(2) Sheriffs' offices;

(3) The courts;

(4) Penal and correctional institutions (including juvenile facilities);

(5) State and local civil defense organizations; and

(6) Fire departments and rescue squads (including volunteer fire departments and rescue squads supported in whole or in part with public funds).

Reasonable alternative fuel means a conventional fuel (such as coal, oil, gas, or wood) that would normally be used as a source of heat in direct use operations.

Secretary means the Secretary of the Interior or any person duly authorized to exercise the powers vested in that office.

Transmission deduction means a deduction for the lessee's reasonable

actual costs incurred to wheel or transmit the electricity from the lessee's power plant to the purchaser's delivery point.

Wheeling means the transmission of electricity from a power plant to the point of delivery.

§ 206.352 How do I calculate the royalty due on geothermal resources used for commercial production or generation of electricity?

(a) If you sold geothermal resources produced from a Class I, II, or III lease at arm's length that the purchaser uses to generate electricity, then the royalty on the geothermal resources is the gross proceeds accruing to you from the sale of the geothermal resource to the arm's-length purchaser multiplied by either:

(1) The royalty rate in your lease; or

(2) The royalty rate that BLM prescribes or calculates under 43 CFR 3211.17. See § 206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales.

(b) If you use the geothermal resource in your own power plant for the generation and sale of electricity, the following provisions apply

(1) For Class I leases, you must determine the royalty on produced geothermal resources in accordance with the first applicable of the following paragraphs:

(i) The gross proceeds accruing to you from the arm's-length sale of the electricity less applicable deductions determined under § 206.353 and § 206.354 of this part, multiplied by the royalty rate in your lease. See § 206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales. Under no circumstances may the deductions reduce the royalty value of the geothermal resource to zero; or

(ii) A royalty determined by any other reasonable method approved by MMS under § 206.364 of this subpart.

(2) For Class II and Class III leases, the royalty on geothermal resources produced is your gross proceeds from the sale of electricity multiplied by the royalty rate BLM prescribed for your lease under 43 CFR 3211.17. See § 206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales. You may not reduce gross proceeds by any deductions.

§ 206.353 How do I determine transmission deductions?

(a) If you determine the value of your geothermal resources under § 206.352(b)(1)(i) of this subpart, you may subtract a transmission deduction from the gross proceeds you received for the sale of electricity to determine the plant tailgate value of the electricity.

(1) The transmission deduction consists of either or both of two components:

(i) Transmission line costs as determined under paragraph (b) of this section; and

(ii) Wheeling costs if the electricity is transmitted across a third party's transmission line under an arm's-length wheeling agreement.

(2) You may deduct the actual costs you (including your affiliate(s)) incur for transmitting electricity under your arm's-length wheeling contract.

(b) To determine your transmission line cost, you must follow the requirements of paragraphs (b)(1) and (b)(2) of this section.

(1) Your transmission line costs are your actual costs associated with the construction and operation of a transmission line for the purpose of transmitting electricity attributable and allocable to your power plant utilizing Federal geothermal resources.

(i) You must determine the monthly transmission line cost component of the transmission deduction by multiplying the annual transmission line cost rate (in dollars per kilowatt-hour) by the amount of electricity delivered for the reporting month.

(ii) You must redetermine the transmission line cost rate annually either at the beginning of the same month of the year in which the power plant was placed into service or at a time concurrent with the beginning of your annual corporate accounting period. The period you select must coincide with the same period you chose for the generating deduction under § 206.354(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without MMS approval.

(2) Your actual transmission line costs during the reporting period include:

(i) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(ii) Overhead under paragraph (f) of this section; and either

(iii) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section or

(iv) A return on the capital investment in the transmission line under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transmission line.

(2)(i) You may include a return on capital you invested in the purchase of real estate for transmission facilities if:

(A) Such purchase is necessary; and

(B) The surface is not part of the Federal lease.

(ii) The rate of return will be the same rate determined under paragraph (k) of this section.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating or maintenance expense that you can document.

(e) Allowable maintenance expenses include:

(1) Maintenance of the transmission line;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transmission line is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment in the transmission line. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without MMS approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract, or other depreciation period acceptable to MMS. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of a transmission line does not alter the depreciation schedule established by the original lessee-owner for purposes of computing transmission line costs.

(3) With or without a change in ownership, you may depreciate a transmission line only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of

the period for which you are calculating the transmission deduction by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the transmission line, multiply the allowable capital investment in the transmission line by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be 2.0 multiplied by the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. Redetermine the rate at the beginning of each subsequent calendar year.

(l) Calculate the deduction for transmission costs based on your cost of transmitting electricity through each individual transmission line.

(m)(1) For new transmission facilities or arrangements, base your initial deduction on estimates of allowable electricity transmission costs for the applicable period. Use the most recently available operations data for the transmission line or, if such data are not available, use estimates based on data for similar transmission lines.

(2) When actual cost information is available, you must amend your prior Form MMS–2014 reports to reflect actual transmission costs deductions for each month for which you reported and paid based on estimated transmission costs. You must pay any additional royalties due (together with interest computed under § 218.302). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, MMS may require you to submit arm's-length transmission contracts, production agreements, operating agreements, and related documents and all other data used to calculate the deduction. You must comply with any such requirements within the time MMS specifies. Recordkeeping requirements are found at part 212 of this chapter.

(o) At the completion of transmission line dismantlement and salvage operations, you may report a credit for or request a refund of royalties in an amount equal to the royalty rate times the amount by which actual transmission line dismantlement costs exceed actual income attributable to salvage of the transmission line.

§ 206.354 How do I determine generating deductions?

(a) If you determine the value of your geothermal resources under § 206.352(b)(1)(i) of this subpart, you may deduct your reasonable actual costs incurred to generate electricity from the plant tailgate value of the electricity (usually the transmission-reduced value of the delivered electricity). You may deduct the actual costs you incur for generating electricity under your arm's-length power plant contract.

(b)(1) You must base your generating costs deduction on your actual annual costs associated with the construction and operation of a geothermal power plant.

(i) You must determine your monthly generating deduction by multiplying the annual generating cost rate (in dollars per kilowatt-hour) by the amount of plant tailgate electricity measured (or computed) for the reporting month. The generating cost rate is determined from the annual amount of your plant tailgate electricity.

(ii) You must redetermine your generating cost rate annually either at the beginning of the same month of the year in which the power plant was placed into service or at a time concurrent with the beginning of your annual corporate accounting period. The period you select must coincide with the same period chosen for the transmission deduction under § 206.353(b)(1). After you choose a deduction period, you may not later elect to use a different deduction period without MMS approval.

(2) Your generating costs are your actual power plant costs during the reporting period, including:

(i) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(ii) Overhead under paragraph (f) of this section; and either

(iii) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section; or

(iv) A return on capital investment in the power plant under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the power plant or are required by the design specifications of the power conversion cycle.

(2)(i) You may include a return on capital you invested in the purchase of real estate for a power plant site if:

(A) The purchase is necessary; and,

(B) The surface is not part of the Federal lease.

(ii) The rate of return will be the same rate determined under paragraph (k) of this section.

(3) You may not deduct the costs of gathering systems and other production-related facilities.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Auxiliary fuel and/or utilities used to operate the power plant during down time;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense.

(e) Allowable maintenance expenses include:

(1) Maintenance of the power plant;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the power plant is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either depreciation with a return on undepreciated capital investment, or a return on capital investment in the power plant. After a lessee has elected to use either method, the lessee may not later elect to change to the other alternative without MMS approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on the life of the geothermal project, usually the term of the electricity sales contract, or other depreciation period acceptable to MMS. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of the power plant does not alter the depreciation schedule established by the original lessee-owner for purposes of computing generating costs.

(3) With or without a change in ownership, you may depreciate a power plant only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the generating deduction allowance by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the power plant, multiply the allowable capital investment in the power plant by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be 2.0 multiplied by the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. You must redetermine the rate at the beginning of each subsequent calendar year.

(l) Calculate the deduction for generating costs based on your cost of generating electricity through each individual power plant.

(m)(1) For new power plants or arrangements, base your initial deduction on estimates of allowable electricity generation costs for the applicable period. Use the most recently available operations data for the power plant or, if such data are not available, use estimates based on data for similar power plants.

(2) When actual cost information is available, you must amend your prior Form MMS–2014 reports to reflect actual generating cost deductions for each month for which you reported and paid based on estimated generating costs. You must pay any additional royalties due (together with interest computed under § 218.302). You are entitled to a credit for or refund of any overpaid royalties.

(n) In conducting reviews and audits, MMS may require you to submit arm's-length power plant contracts, production agreements, operating agreements, related documents and all other data used to calculate the deduction. You must comply with any such requirements within the time MMS specifies. Recordkeeping requirements are found at part 212 of this chapter.

(o) At the completion of power plant dismantlement and salvage operations, you may report a credit for or request a refund of royalty in an amount equal to the royalty rate times the amount by which actual power plant dismantlement costs exceed actual income attributable to salvage of the power plant.

§ 206.355 How do I calculate royalty due on geothermal resources I sell at arm's length to a purchaser for direct use?

If you sell geothermal resources produced from Class I, II, or III leases at arm's length to a purchaser for direct use, then the royalty on the geothermal resource is the gross proceeds accruing to you from the sale of the geothermal resource to the arm's-length purchaser multiplied by the royalty rate in your lease or that BLM prescribes under 43 CFR 3211.18. See § 206.361 for additional provisions applicable to determining gross proceeds under arm's-length sales.

§ 206.356 How do I calculate royalty or fees due on geothermal resources I use for direct use purposes?

If you use the geothermal resource for direct use:

(a) For Class I leases, you must determine the royalty due on geothermal resources in accordance with the first applicable of the following three paragraphs.

(1) The weighted average of the gross proceeds established in arm's-length contracts for the purchase of significant quantities of geothermal resources to operate the lessee's same direct-use facility multiplied by the royalty rate in your lease. In evaluating the acceptability of arm's-length contracts, the following factors will be considered: time of execution, duration, terms, volume, quality of resource, and such other factors as may be appropriate to reflect the value of the resource.

(2) The equivalent value of the least expensive, reasonable alternative energy source (fuel) multiplied by the royalty rate in your lease. The equivalent value of the least expensive, reasonable alternative energy source will be based on the amount of thermal energy that would otherwise be used by the direct use facility in place of the geothermal resource. That amount of thermal energy (in Btu) displaced by the geothermal resource will be determined by the equation:

$$\text{thermal energy displaced} = \frac{(h_{in} - h_{out}) \times \text{density} \times 0.113681 \times \text{volume}}{\text{efficiency factor}}$$

Where h_{in} is the enthalpy in Btu/lb at the direct use facility inlet (based on measured inlet temperature), h_{out} is the enthalpy in Btu/lb at the facility outlet (based on measured outlet temperature), density is in lbs/cu ft based on inlet temperature, the factor 0.113681 (cu ft/gal) converts gallons to cubic feet, and volume is the quantity of geothermal fluid in gallons produced at the wellhead or measured at an approved point. The efficiency factor of the alternative energy source will be 0.7 for coal and 0.8 for oil, natural gas, and other fuels derived from oil and natural gas, or an efficiency factor proposed by the lessee and approved by MMS. The methods of measuring resource parameters (temperature, volume, etc.) and the frequency of computing and accumulating the amount of thermal energy displaced will be determined and approved by BLM under 43 CFR 3275.13–3275.17.

(3) A royalty determined by any other reasonable method approved by MMS or the Assistant Secretary, Land and Minerals Management of the Department of the Interior, under § 206.364 of this part.

(b) For geothermal resources produced from Class II and Class III leases, you must multiply the appropriate fee from the schedule in subparagraph (b)(1) of this section by the number of gallons or pounds you produce from the direct use lease each month.

(1) You must use the following fee schedule to calculate fees due under this section:

DIRECT USE FEE SCHEDULE

[Hot water]

If your average monthly inlet temperature ([deg]F) is		Your fees are . . .	
At least . . .	But less than . . .	($/million gallons)	($/million pounds)
130	140	2.524	0.307

DIRECT USE FEE SCHEDULE—Continued

[Hot water]

If your average monthly inlet temperature ([deg]F) is		Your fees are . . .	
At least . . .	But less than . . .	($/million gallons)	($/million pounds)
140	150	7.549	0.921
150	160	12.543	1.536
160	170	17.503	2.150
170	180	22.426	2.764
180	190	27.310	3.379
190	200	32.153	3.993
200	210	36.955	4.607
210	220	41.710	5.221
220	230	46.417	5.836
230	240	51.075	6.450
240	250	55.682	7.064
250	260	60.236	7.679
260	270	64.736	8.293
270	280	69.176	8.907
280	290	73.558	9.521
290	300	77.876	10.136
300	310	82.133	10.750
310	320	86.328	11.364
320	330	90.445	11.979
330	340	94.501	12.593
340	350	98.481	13.207
350	360	102.387	13.821

(i) For direct use geothermal resources with an average monthly inlet temperature of 130 [deg]F or less, you must pay only the lease rental.

(ii) The MMS, in consultation with BLM, will develop and publish a revised fee schedule in the **Federal Register**, as needed.

(iii) The MMS, in consultation with BLM, will calculate revised fees schedules using the following formulas:

$$\text{For reporting on a volume basis: } R_v = \rho \times (T_{in} - T_{out}) \times P_{prbc} \times F_{rr} \times \frac{1}{e}$$

$$\text{For reporting on a mass basis: } R_m = (T_{in} - T_{out}) \times P_{prbc} \times F_{rr} \times \frac{1}{e}$$

Where:

R_V = Royalty due as a function of produced volume in the fee schedule, expressed as dollars per million (10^6) gallons;

R_m = Royalty due as a function of produced mass in the fee schedule, expressed as dollars per million (10^6) pounds;

[rho][rho] = Water density at inlet temperature expressed as lbs per gallon;

T_{in} = Measured inlet temperature in [deg]F (as required by BLM under 43 CFR part 3275);

T_{out} = Established assumed outlet temperature of 130[deg] F;

e = Boiler Efficiency Factor for coal of 70 percent;

P_{prbc} = The 3-year historical average of Powder River Basin spot coal prices, as published by the Energy Information Administration, or other recognized authoritative reference source of coal prices, in dollars (per MMBtu);

F_{rr} = The assumed Lease Royalty Rate of 10 percent.

(2) The fee that you report is subject to monitoring, review, and audit.

(3) The schedule of fees established under this paragraph will apply to any Class III lease with respect to any royalty payments previously made when the lease was a Class I lease that were due and owing, and were paid, on or after July 16, 2003. To use this provision, you must provide MMS data showing the amount of geothermal production in pounds or gallons of geothermal fluid to input into the fee schedule (see 43 CFR part 3276).

(i) If the royalties you previously paid are less than the fees due under this section, you must pay the difference plus interest on that difference computed under § 218.302.

(ii) If the royalties you previously paid are more than the fees due under this section, then you are entitled to a refund or credit from MMS of 50 percent of the overpaid royalties. You are also entitled to a refund or credit of any interest that you paid on the overpaid royalties.

(c) For geothermal resources other than hot water, MMS will determine fees on a case-by-case basis.

§ 206.357 How do I calculate royalty due on byproducts?

(a) If you sell byproducts, you must determine the royalty due on the byproducts that are royalty-bearing under:

(1) Applicable lease terms of Class I leases and of Class III leases that do not elect to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005, under 43 CFR 3200.7(a)(2), or

(2) Applicable statutory provisions at 30 U.S.C. 1004(a)(2) for Class II leases and for Class III leases that do elect to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005, under 43 CFR 3200.7(a)(2).

(b) You must determine the royalty due on the byproducts by multiplying the royalty rate in your lease or that BLM prescribes under 43 CFR 3211.19 by a value of the byproducts determined in accordance with the first applicable of the following subparagraphs:

(1) The gross proceeds accruing to you from the arm's-length sale of the byproducts, less any applicable byproduct transportation allowances determined under § § 206.358 and 206.359. See § 206.361 for additional provisions applicable to determining gross proceeds;

(2) Other relevant matters including, but not limited to, published or publicly available spot-market prices, or information submitted by the lessee concerning circumstances unique to a particular lease operation or the saleability of certain byproducts; or

(3) Any other reasonable valuation method approved by MMS.

§ 206.358 What are byproduct transportation allowances?

(a) When you determine the value of byproducts at a point off the geothermal lease, unit, or participating area, you are allowed a deduction in determining value, for royalty purposes, for your reasonable, actual costs incurred to:

(1) Transport the byproducts from a Federal lease, unit, or participating area to a sales point or point of delivery that is off the lease, unit, or participating area; or

(2) Transport the byproducts from a Federal lease, unit, or participating area, or from a geothermal use facility to a byproduct recovery facility when that byproduct recovery facility is off the lease, unit, or participating area and, if applicable, from the recovery facility to a sales point or point of delivery off the lease, unit, or participating area.

(b) Costs for transporting geothermal fluids from the lease to the geothermal use facility, whether on or off the lease, are not includible in the byproduct transportation allowance.

(c)(1) When you transport byproducts from a lease, unit, participating area, or geothermal use facility to a byproduct recovery facility, you are not required to allocate transportation costs between the quantity of marketable byproducts and the rejected waste material. The byproduct transportation allowance is authorized for the total production that is transported. You must express byproduct transportation allowances as a cost per unit of marketable byproducts transported.

(2) For byproducts that are extracted on the lease, unit, participating area, or at the geothermal use facility, the byproduct transportation allowance is authorized for the total byproduct that is transported to a point of sale off the lease, unit, or participating area. You must express byproduct transportation allowances as a cost per unit of byproduct transported.

(3) You may deduct transportation costs only when you sell, deliver, or otherwise utilize the transported byproduct and report and pay royalties on the byproduct.

(d) *Reporting requirements.* (1) You must use a discrete field on Form MMS–2014 to notify MMS of a transportation allowance.

(2) In conducting reviews and audits, MMS may require you to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. You must comply with any such requirements within the time MMS specifies. Recordkeeping requirements are found at part 212 of this chapter.

(e) Byproduct transportation allowances are subject to monitoring, review, and audit. If, after a review or audit, MMS determines that you have improperly determined a byproduct transportation allowance, you must pay any additional royalties due (plus interest computed under § 218.302). You are entitled to a credit for or refund of any overpaid royalties.

(f) If you commingled byproducts produced from Federal and non-Federal leases for transportation, you may not disproportionately allocate transportation costs to Federal lease production.

§ 206.359 How do I determine byproduct transportation allowances?

(a) For transportation costs you incur under an arm's-length contract, the transportation allowance will be the reasonable, actual costs you incurred for transporting the byproducts under that contract.

(1) In conducting reviews and audits, MMS will examine whether the contract reflects more than the consideration actually transferred either directly or indirectly from you to the transporter for the transportation. If the contract reflects more than the total consideration you paid, MMS may require you to determine the byproduct transportation allowance under paragraph (b) of this section.

(2) If MMS determines that the consideration you paid under an arm's-length byproduct transportation contract does not reflect the reasonable value of the transportation because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS will require you to determine the byproduct transportation allowance under paragraph (b) of this section. When MMS determines that the value of the transportation may be unreasonable, MMS will notify you and give you an opportunity to provide written information justifying your transportation costs.

(3) Where your payments for transportation under an arm's-length contract are not established on a dollars-per-unit basis, you must convert whatever consideration you paid to a dollar value equivalent for the purposes of this section.

(b) If you transport the byproduct yourself or under a non-arm's-length transportation arrangement, the byproduct transportation allowance is your reasonable actual costs for transportation during the reporting period, including:

(1) Operating and maintenance expenses under paragraphs (d) and (e) of this section;

(2) Overhead under paragraph (f) of this section; and either

(3) Depreciation under paragraphs (g) and (h) of this section and a return on undepreciated capital investment under paragraphs (g) and (i) of this section; or

(4) A return on capital investment in the transportation system under paragraphs (g) and (j) of this section.

(c)(1) Allowable capital costs under paragraph (b) of this section are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) that are an integral part of the transportation system.

(2)(i) You may include a return on capital you invested in the purchase of real estate to locate the byproduct transportation facilities if:

(A) The purchase is necessary; and

(B) The surface is not part of a Federal lease.

(ii) The rate of return will be the same rate determined in paragraph (k) of this section.

(3) You may not deduct the costs of gathering systems and other production-related facilities.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense that you can document.

(e) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses that you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) To compute costs associated with capital investment, a lessee may use either paragraphs (h) and (i) or paragraph (j) of this section. After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without MMS approval.

(h)(1) To compute depreciation, you must use a straight-line depreciation method based on either the life of the equipment or the life of the geothermal project which the transportation system services. After you choose the basis for depreciation, you may not change that basis without MMS approval. You may not depreciate equipment below a reasonable salvage value.

(2) A change in ownership of a transportation system does not alter the depreciation schedule established by the original lessee-owner for purposes of computing transportation costs.

(3) With or without a change in ownership, you may depreciate a transportation system only once.

(i) To calculate a return on undepreciated capital investment, multiply the remaining undepreciated capital balance as of the beginning of the period for which you are calculating the transportation allowance by the rate of return provided in paragraph (k) of this section.

(j) To compute a return on capital investment in the transportation system, the allowed cost will be the amount equal to the allowable capital investment in the transportation system multiplied by the rate of return determined pursuant to paragraph (k) of this section. There is no allowance for depreciation.

(k) The rate of return must be the industrial rate associated with Standard & Poor's BBB rating. The BBB rate must be the monthly average rate as published in Standard & Poor's Bond Guide for the first month for which the allowance is applicable. You must redetermine the rate at the beginning of each subsequent calendar year.

(l)(1) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable byproduct transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems.

(2) When actual cost information is available, you must amend your prior Form MMS–2014 reports to reflect actual byproduct transportation cost deductions for each month for which you reported and paid based on estimated byproduct transportation costs. You must pay any additional royalties due (together with interest computed under § 218.302). You are entitled to a credit for or a refund of any overpaid royalties.

§ 206.360 What records must I keep to support my calculations of royalty or fees under this subpart?

If you determine royalties or direct use fees for your geothermal resource under this subpart, you must retain all data relevant to the determination of the royalty value or the fee you paid. Recordkeeping requirements are found at part 212 of this chapter.

(a) You must be able to show:

(1) How you calculated the royalty value or fee you reported, including all allowable deductions; and

(2) How you complied with this subpart.

(b) Upon request, you must submit all data to MMS. You must comply with any such requirement within the time MMS specifies.

§ 206.361 How will MMS determine whether my royalty or direct use fee payments are correct?

(a)(1) The royalties or direct use fees that you report are subject to monitoring, review, and audit. The MMS may review and audit your data, and MMS will direct you to use a different measure of royalty value, gross proceeds, or fee, whichever is applicable, if it determines that the reported value, gross proceeds, or fee is inconsistent with the requirements of this subpart.

(2) If MMS directs you to use a different royalty value, measure of gross proceeds, or fee, you must either pay any royalties or fees due (together with interest computed under § 218.302) or report a credit for or request a refund of any overpaid royalties or fees.

(b) When the provisions in this subpart refer to gross proceeds either for the sale of electricity or the sale of a geothermal resource, in conducting reviews and audits MMS will examine whether your sales contract reflects the total consideration actually transferred, either directly or indirectly, from the buyer to you for the geothermal resource or electricity. If MMS determines that a contract does not reflect the total consideration, or the gross proceeds accruing to you under a contract do not reflect reasonable consideration because of misconduct by or between the contracting parties, or because you otherwise have breached your duty to the lessor to market the production for the mutual benefit of the lessee and the lessor, MMS may require you to increase the gross proceeds to reflect any additional consideration. Alternatively, for Class I leases, MMS may require you to use another valuation method in the regulations applicable to dispositions other than under an arm's-length contract. The MMS will notify you to give you an opportunity to provide written information justifying your gross proceeds.

(c) For arm's-length sales, you have the burden of demonstrating that your contract is arm's length.

(d) The MMS may require you to certify that the provisions in your sales contract include all of the consideration the buyer paid you, either directly or indirectly, for the electricity or geothermal resource.

(e) Notwithstanding any other provision of this subpart, under no circumstances will the value of production for royalty purposes under a Class I lease where the geothermal resources are sold before use be less than the gross proceeds accruing to you.

(f) Gross proceeds for the sale of electricity or for the sale of the geothermal resource will be based on the highest price a prudent lessee can receive through legally enforceable claims under its contract.

(1) Absent contract revision or amendment, if you fail to take proper or timely action to receive prices or benefits to which you are entitled, you must pay royalty based upon that obtainable price or benefit.

(2) Contract revisions or amendments you make must be in writing and signed by all parties to the contract.

(3) If you make timely application for a price increase or benefit allowed under your contract, but the purchaser refuses and you take reasonable measures, which are documented, to force purchaser compliance, you will owe no additional royalties unless or until you receive additional monies or consideration resulting from the price increase. This paragraph (f)(3) will not be construed to permit you to avoid your royalty payment obligation in situations where a purchaser fails to pay, in whole or in part or timely, for a quantity of geothermal resources or electricity.

§ 206.362 What are my responsibilities to place production into marketable condition and to market production?

You must place geothermal resources and byproducts in marketable condition and market the geothermal resources or byproducts for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining royalty, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the geothermal resources or byproducts in marketable condition or to market the geothermal resources or byproducts.

§ 206.363 When is an MMS audit, review, reconciliation, monitoring, or other like process considered final?

Notwithstanding any provision in these regulations to the contrary, no audit, review, reconciliation, monitoring, or other like process that results in a redetermination by MMS of royalty or fees due under this subpart is considered final or binding as against the Federal Government or its beneficiaries until MMS formally closes the audit period in writing.

§ 206.364 How do I request a value or gross proceeds determination?

(a) You may request a value determination from MMS regarding any geothermal resources produced from a Class I lease or for byproducts produced from a Class I, Class II, or Class III lease. You may also request a gross proceeds determination for a Class II or Class III lease. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, all owners of interests in those leases, and the operator(s) for those leases;

(3) Completely explain all relevant facts. You must inform MMS of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed gross proceeds calculation or valuation method.

(b) In response to your request:

(1) The Assistant Secretary, Land and Minerals Management, may issue a determination; or

(2) The MMS may issue a determination; or

(3) The MMS may inform you in writing that MMS will not provide a determination. Situations in which MMS typically will not provide any determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations; and

(ii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay the royalties owed together with late payment interest computed under § 218.302.

(3) A determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d) A determination issued by MMS is binding on MMS and delegated States, but not on you, with respect to the specific situation addressed in the determination unless the MMS (for MMS-issued determinations) or the Assistant Secretary modifies or rescinds it.

(1) A determination by MMS is not an appealable decision or order under 30 CFR part 290 subpart B.

(2) If you receive an order requiring you to pay royalty on the same basis as the determination, you may appeal that order under 30 CFR part 290 subpart B.

(e) In making a determination, MMS or the Assistant Secretary may use any of the applicable criteria in this subpart.

(f) A change in an applicable statute or regulation on which any determination is based takes precedence over the determination after the effective date of the statute or regulation, regardless of whether the MMS or the Assistant Secretary modifies or rescinds the determination.

(g) The MMS or the Assistant Secretary generally will not retroactively modify or rescind a determination issued under paragraph (d) of this section, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(h) The MMS may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 206.365.

§ 206.365 Does MMS protect information I provide?

Certain information you submit to MMS regarding royalties or fees on geothermal resources or byproducts, including deductions and allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.366 What is the nominal fee that a State, tribal, or local government lessee must pay for the use of geothermal resources?

If a State, tribal, or local government lessee uses a geothermal resource without sale and for public purposes—other than commercial production or generation of electricity—the State, tribal, or local government lessee must pay a nominal fee. A nominal fee means a slight or *de minimis* fee. The MMS will determine the fee on a case-by-case basis.

PART 210—FORMS AND REPORTS

■ 6. The authority for part 210 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

Subpart H—Geothermal Resources

§ 210.352 [Removed] and §§ 210.353 through 210.355 [Redesignated]

■ 7. Remove § 210.352, and redesignate §§ 210.353 through 210.355 as §§ 210.352 through 210.354, respectively.

■ 8. Revise redesignated § 210.354 to read as follows:

§ 210.354 Reporting Instructions.

Specific guidance on how to prepare and submit required information collection reports and forms to MMS is contained in the publication titled *Minerals Revenue Reporter Handbook—Oil, Gas, and Geothermal Resources,* which is available from the Minerals Management Service, Minerals Revenue Management, Financial Management, P.O. Box 25165, Mail Stop 350B1, Denver, CO 80225–0165. For copies from the MMS Web site, go to *http://www.mrm.mms.gov/*. Click Reporting Information and select the topic.

PART 217—AUDITS AND INSPECTIONS

■ 9. The authority for part 217 continues to read as follows:

Authority: 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a–f, 30 U.S.C. 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483–485; 5 U.S.C. 301; 16 U.S.C. 508b; 30 U.S.C. 189, 192c, 271, 281, 293, 359; and 43 U.S.C. 387, unless otherwise noted.

■ 10. Add a new subpart G to read as follows:

Subpart G—Geothermal Resources

Sec.
217.300 Audits or review of records.
217.301 Lease account reconciliations.
217.302 Definitions.

§ 217.300 Audit or review of records.

The Secretary, or his/her authorized representative, will initiate and conduct audits or reviews relating to the scope, nature, and extent of compliance by lessees, operators, revenue payors, and other persons with rental, royalty, fees, and other payment requirements on a Federal geothermal lease. Audits or reviews will also relate to compliance with applicable regulations and orders. All audits or reviews will be conducted in accordance with this part.

§ 217.301 Lease account reconciliations.

Specific lease account reconciliations will be performed with priority being given to reconciling those lease accounts specifically identified by a State as having significant potential for underpayment.

§ 217.302 Definitions.

Terms used in this subpart will have the same meaning as in 30 U.S.C. 1702.

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

■ 11. Revise the heading for part 218 to read as follows:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT AND CREDITS AND INCENTIVES DUE LESSEES

■ 12. The authority for part 218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*; 1701 *et seq.*; 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.*; 1331 *et seq.*, and 1801 *et seq.*

■ 13. Add new § § 218.303 through 218.307 to subpart F to read as follows:

Subpart F—Geothermal Resources

* * * * *

§ 218.303 May I credit rental towards royalty?

(a)(1) For Class II leases as defined in 30 CFR 206.351, and for Class III leases as defined in that section that elect under 43 CFR 3200.7(a)(2) to be subject to all of the BLM regulations promulgated for leases issued after August 8, 2005 you may credit the annual rental that you paid before the first day of the year for which the annual rental is owed against the royalty due for the lease year for which the rental was paid. You may not apply any annual rental paid in excess of the royalty due for a particular lease year as a credit against any royalty due in any subsequent lease year.

(2) For purposes of this section, the term ''royalty'' includes any advanced royalty payable under 30 U.S.C. 1004(f) for a cessation of production.

(b) If portions of your lease are located both within and outside of a participating area, you may credit against royalty under paragraph (a) only that percentage of the rental you paid that corresponds to the percentage of the lease within the participating area on a per-acre basis.

§ 218.304 May I credit rental towards direct use fees?

You may not credit annual rental toward direct use fees you are required to pay that year under § 206.356(b). You must pay the direct use fees in addition to the annual rental due.

§ 218.305 How do I pay advanced royalties I owe under BLM regulations?

If you pay advanced royalties under 43 CFR 3212.15(a)(1) to retain your lease:

(a) You must pay an advanced royalty monthly equal to the average monthly royalty you paid under 30 CFR part 206, subpart H (including the amount against which you applied the annual rental as a credit) for the last 3 years the lease was producing. If your lease has been producing for less than 3 years, then use the average monthly royalty payment for the entire period your lease has been producing continuously;

(b) The MMS must receive your advanced royalty payment before the end of each full calendar month in which no production occurs;

(c) You may credit any advanced royalty you pay against production royalties you owe after your lease resumes production. You may not reduce the amount of any production royalty paid for any year below zero.

§ 218.306 May I receive a credit against production royalties for in-kind deliveries of electricity I provide under contract to a State or county government?

(a) You may receive a credit against royalties for in-kind deliveries of electricity you provide under contract to a State or county government if:

(1) The State or county to which you provide electricity would receive a portion of the royalties you paid in money for the lease under 30 U.S.C. 191 or 30 U.S.C. 1019, except as otherwise provided under the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 355, because your lease is located in that State or county. If your lease is located in more than one State or county, the revenues are paid to the respective States or counties based on their proportionate shares of the total acres in the lease;

(2) The MMS approves in advance your contract with the State or county to which you are providing in-kind electricity; and

(3) Your contract provides that you will use the wholesale value of the electricity for the area where your lease is located to establish the specific methodology to determine the amount of the credit; and

(b) The maximum credit you may take under this section is equal to the portion of the royalty revenue that MMS would have paid to the State or county that is a party to the contract had you paid royalty in money on all of the electricity you delivered to the State or county based on the wholesale value of the electricity. You must pay in money any royalty amount that is not offset by the credit allowed under this section, calculated based on the wholesale value of the electricity.

(c) The electricity the State or county government receives from you satisfies the Secretary's payment obligation to the State or county under 30 U.S.C. 191 or 30 U.S.C. 1019.

§ 218.307 How do I pay royalties due for my existing leases that qualify for near-term production incentives under BLM regulations?

If you qualify for a production incentive under BLM regulations at 43 CFR subpart 3212, your royalty due on the production BLM determines to be qualified for a production incentive under 43 CFR 3212.23 and 3212.24 is 50 percent of the amount of the total

royalty that would otherwise be due under 30 CFR part 206, subpart H.

[FR Doc. E7–7952 Filed 5–1–07; 8:45 am]

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Wednesday,
May 2, 2007

Part IV

Environmental Protection Agency

40 CFR Parts 51 and 93

Transportation Conformity Rule Amendments to Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU); Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[EPA–HQ–OAR–2006–0612; FRL–8303–9]

RIN 2060–AN82

Transportation Conformity Rule Amendments to Implement Provisions Contained in the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action EPA is proposing to amend the transportation conformity rule to make it consistent with Clean Air Act section 176(c) as amended by SAFETEA–LU, which was signed into law on August 10, 2005 (Pub. L. 109–59). The Clean Air Act requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with (''conform to'') the purpose of the state air quality implementation plan.

To make the transportation conformity rule consistent with SAFETEA–LU's revisions to the Clean Air Act, this proposal would change the regulations to reflect that the statute now provides more time for state and local governments to meet conformity requirements, provides a one-year grace period before the consequences of not meeting certain conformity requirements apply, allows the option of shortening the timeframe conformity determinations, and streamlines other provisions.

EPA is also including other proposals not related to SAFETEA–LU, such as a proposal to allow the Department of Transportation (DOT) to make categorical hot-spot findings for appropriate projects in carbon monoxide areas. EPA has consulted with DOT, and they concur with this proposal.

DATES: Comments must be received on or before June 1, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0612, by one of the following methods:

<bullet≤ *www.regulations.gov:* Follow the on-line instructions for submitting comments.

<bullet≤ E-mail: *a-and-r-docket@epa.gov.*

<bullet≤ Fax: (202) 566–1741.

<bullet≤ Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0612. Please include two copies.

<bullet≤ Hand Delivery: EPA Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0612. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I.C. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *kapichak.rudolph@epa.gov,* telephone number: (734) 214–4574, fax number: (734) 214–4052; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, e-mail address: *berry.laura@epa.gov*, telephone number: (734) 214–4858, fax number: (734) 214–4052.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information
II. Background
III. Frequency of Conformity Determinations
IV. Deadline for Conformity Determinations When a New Budget Is Established
V. Lapse Grace Period
VI. Timeframes for Conformity Determinations
VII. Conformity SIPs
VIII. Transportation Control Measure Substitutions and Additions
IX. Categorical Hot-spot Findings for Projects in Carbon Monoxide Nonattainment and Maintenance Areas
X. Deletion of Regulation 40 CFR 93.109(e)(2)(v)
XI. Miscellaneous Revisions
XII. Statutory and Executive Order Reviews

I. General Information

A. Does This Action Apply to Me?

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government.	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).

Category	Examples of regulated entities
State government.	State transportation and air quality agencies.
Federal government.	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider As I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through 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:

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

<bullet≤ 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.

<bullet≤ Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.

<bullet≤ Describe any assumptions and provide any technical information and/or data that you used.

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

<bullet≤ Provide specific examples to illustrate your concerns, and suggest alternatives.

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

<bullet≤ Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may pay a reasonable fee for copying docket materials.

C. How Can I Get Copies of This Proposed Rule and Other Documents?

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2006–0612. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm.* You may also access this document electronically under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the official public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. above. EPA intends to work towards providing electronic access in the future to all of the publicly available docket materials through the electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the electronic public docket along with a brief description written by the docket staff.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

II. Background

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Conformity currently applies to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for the following transportation-related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}),[1] carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or ''standards'').

[1] 40 CFR 93.102(b)(1) defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

B. History of the Transportation Conformity Rule

EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780), that clarified and streamlined language from the 1993 rule. EPA has made other amendments to the rule both before and after the 1997 amendments.

On July 1, 2004, EPA published a final rule (69 FR 40004) that amended the conformity rule to accomplish three objectives. The final rule:

<bullet≤ Provided conformity procedures for state and local agencies under the 8-hour ozone and $PM_{2.5}$ standards;

<bullet≤ Incorporated existing EPA and U.S. Department of Transportation (DOT) federal guidance into the conformity rule consistent with a March 2, 1999, U.S. Court of Appeals decision; and

<bullet≤ Streamlined and improved the conformity rule.

On May 6, 2005, EPA promulgated a final rule entitled, ''Transportation Conformity Rule Amendments for the New $PM_{2.5}$ National Ambient Air Quality Standard: $PM_{2.5}$ Precursors'' (70 FR 24280). This final rule specified transportation-related $PM_{2.5}$ precursors and when they apply in transportation conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas.

Finally, on March 10, 2006, EPA promulgated a final rule (71 FR 12468) that established the criteria for determining which transportation projects must be analyzed for local particulate matter emissions impacts in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. This rule established requirements in $PM_{2.5}$ areas and revised existing requirements in PM_{10} areas.

C. Why Are We Issuing This Proposed Rule?

On August 10, 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) was signed into law (Pub. L. 109–59). SAFETEA–LU section 6011 amended Clear Air Act section 176(c) by:

<bullet≤ Changing the required frequency of transportation conformity determinations from three years to four years;

<bullet≤ Providing two years to determine conformity after new SIP motor vehicle emissions budgets are either found adequate, approved or promulgated;

<bullet≤ Adding a one-year grace period before the consequences of a conformity lapse apply;

<bullet≤ Providing an option for reducing the time period addressed by conformity determinations;

<bullet≤ Streamlining requirements for conformity SIPs; and

<bullet≤ Providing procedures for areas to use in substituting or adding transportation control measures (TCMs) to approved SIPs.

SAFETEA–LU section 6011(g) requires that EPA revise the transportation conformity rule as necessary to address the new statutory provisions no later than August 10, 2007. Today's proposed rule addresses the relevant changes that SAFETEA–LU made to the Clean Air Act.

In response to the revised statutory requirements, on February 14, 2006, EPA and DOT issued joint interim guidance to provide areas that are subject to transportation conformity with guidance on implementing the changes. This guidance, as well as additional information on the transportation conformity rule and associated guidance, can be found on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

EPA has consulted with DOT on the development of this proposed rule, and DOT concurs with its content. EPA has also met with transportation and environmental organizations to discuss this rulemaking. The proposal reflects our consideration of the comments that we received through these stakeholder discussions. Documentation of these stakeholder meetings and items discussed are included in the docket for this rulemaking.

III. Frequency of Conformity Determinations

A. Proposal

EPA proposes to change § 93.104(b)(3) to require that the MPO and DOT determine conformity of a transportation plan at least every four years, and § 93.104(c)(3) to require that the MPO and DOT determine conformity of a transportation improvement program (TIP) at least every four years.

B. Rationale

These proposed changes to § 93.104 are necessary to make the conformity regulation consistent with the law. In SAFETEA–LU, Congress amended Clean Air Act section 176(c)(4)(D)(ii) to require that conformity be determined with a frequency of four years, unless the MPO decides to update its transportation plan or TIP more frequently, or the MPO is required to determine conformity in response to a trigger (see Section IV.). The Clean Air Act previously required transportation plan and TIP conformity to be determined every three years. These Clean Air Act provisions have been in effect as of August 10, 2005.

C. Overlap With Transportation Planning Frequency Requirements

It is important to note how today's proposal would interact with the implementation of SAFETEA–LU's transportation planning requirements, although this proposal would not amend those requirements. In addition to changing the required frequency of conformity determinations from at least every three years to every four years, SAFETEA–LU also changed the required frequency for updating transportation plans and TIPs for transportation planning purposes. Prior to SAFETEA–LU, transportation plans in nonattainment and maintenance areas had to be updated every three years and TIPs updated every two years; now both transportation plans and TIPs must be updated every four years in these areas. However, MPOs can voluntarily update their transportation plans and TIPs more frequently. Consequently, conformity may still need to be determined more frequently than every four years, because an updated or amended transportation plan or TIP still must conform before it is adopted, regardless of the last time a conformity determination was done.

In addition, section 6001(b) of SAFETEA–LU requires DOT to issue guidance on a schedule for implementing SAFETEA–LU's transportation planning provisions, and specifically states, ''The Secretary shall not require a State or metropolitan planning organization to deviate from its established planning update cycle to implement changes'' made by SAFETEA–LU prior to July 1, 2007. The DOT guidance, which is available at *http://www.fhwa.dot.gov/hep/legreg.htm,* provides information on the development of transportation plans and TIPs prior to and on/after July 1, 2007, as part of SAFETEA–LU implementation. Conformity determinations continue to be required when such updates are made, as well as for any other amendments to the transportation plan and TIP made mid-cycle, unless the amendment merely adds or deletes exempt projects (see 40 CFR 93.104(b)(2) and (c)(2)). Further discussion of the implementation of the SAFETEA–LU update cycles can also be found in DOT's February 14, 2007, final

rulemaking on metropolitan and statewide transportation planning (72 FR 7224).

EPA's proposal does not change other details for implementing conformity and planning frequency requirements. Both the transportation planning update clock and the conformity update clock continue to be reset on the date of the FHWA and FTA conformity determination for the respective transportation plan and/or TIP. For more information, see DOT's May 25, 2001, guidance, available at *http://www.fhwa.dot.gov/environment/conformity/planup—m.htm.*

D. Related Proposed Change: Consequences of a Control Strategy SIP Disapproval

1. Proposal

EPA is proposing to revise § 93.120(a)(2) to allow projects in the conforming TIP, rather than the first three years of the conforming transportation plan and TIP, to proceed after final EPA disapproval of a control strategy SIP without a protective finding, i.e., when a conformity freeze occurs.

2. Rationale

EPA is proposing this minor change to be consistent with general implementation of SAFETEA–LU. Since 1997, the conformity rule has allowed projects in the first three years of the conforming transportation plan and TIP to proceed when a control strategy SIP is disapproved without a protective finding. EPA's rationale for allowing projects from the first three years of the transportation plan and TIP to proceed was that previous statutory provisions required TIPs to address a duration of three years. See the proposed rule of July 9, 1996, (61 FR 36124–6), and the final rule of August 15, 1997, (62 FR 43796–7) for this discussion.

SAFETEA–LU section 6001(a) revised DOT's metropolitan planning requirements by extending the duration of TIPs from three years to four years. Therefore, EPA believes that it is appropriate to revise § 93.120(a)(2) to take into account the revised duration of TIPs. As we stated in the 1996 proposed and 1997 final conformity rules, EPA believes that aligning the requirements of § 93.120(a)(2) with the duration of the TIP provides the right balance between the competing objectives of minimizing new transportation commitments after a SIP disapproval and minimizing disruption to the transportation planning process.

Instead of changing ''three years'' to ''four years'' in the proposed regulatory text, EPA simply proposes to allow a project to proceed during a freeze if it is included in the conforming TIP. EPA is generalizing this language in order to account for the transition to new SAFETEA–LU planning requirements, because some MPOs will have three-year TIPs prior to developing four-year TIPs for SAFETEA–LU.

However, this proposed general language is not intended to change other rule requirements. Although EPA's proposed change to § 93.120(a)(2) would no longer include the phrase ''conforming transportation plan,'' the requirements of § 93.114 continue to apply. Specifically, there must still be a currently conforming transportation plan in place to approve projects during a conformity freeze (except as noted in Section V.E., below).

IV. Deadline for Conformity Determinations When a New Budget Is Established

A. Proposal

EPA is proposing to revise § 93.104(e), which requires a new transportation plan and TIP conformity determination to be made after actions that establish a new motor vehicle emissions budget for conformity, also known as ''triggers.'' EPA is proposing that MPOs and DOT would have two years to determine conformity of a transportation plan and TIP when a new budget is established, increased from the current rule's 18 months. An MPO and DOT must make a conformity determination within two years of the effective date of:

<bullet≤ EPA's finding that a motor vehicle emissions budget(s) (''budget(s)'') in a submitted SIP is adequate (40 CFR 93.104(e)(1));

<bullet≤ EPA's approval of a SIP, if the budget(s) from that SIP have not yet been used in a conformity determination (40 CFR 93.104(e)(2)); and

<bullet≤ EPA's promulgation of a federal implementation plan (FIP) with a budget(s) (40 CFR 93.104(e)(3)).

The requirement to determine conformity within two years of these triggers is not directly related to SAFETEA–LU's transportation planning update requirements.

B. Rationale

The proposed change is necessary to make the conformity regulation consistent with the law. In SAFETEA–LU, Congress amended the Clean Air Act to give MPOs and DOT two years before conformity must be determined in response to one of the conformity triggers above. This Clean Air Act provision has been in effect as of August 10, 2005. The 18-month clocks that started prior to August 10, 2005, were extended by six months by statute, bringing the total time of any existing clocks to two years. Additionally, any clocks started by EPA adequacy findings or approvals on or after August 10, 2005, are two-year clocks.

Prior to the passage of SAFETEA–LU, EPA's regulation required conformity of a transportation plan and TIP to be determined when a new budget was established, but the Clean Air Act did not include this specific requirement. In the conformity regulations, EPA required that conformity of transportation plans and TIPs be determined within 18 months of the SIP or FIP triggers described above to ensure that new air quality information was introduced into the conformity process in a timely manner.

With the passage of SAFETEA–LU, the Clean Air Act now includes the requirement to determine conformity of a transportation plan and TIP within two years of a trigger. The language added to the Clean Air Act in section 176(c)(2)(E) closely followed EPA's regulation at § 93.104(e). Therefore, EPA is merely proposing to align the deadline in § 93.104(e) with the new deadline under the statute.

No change is proposed for the events that trigger a new conformity determination, because they are already consistent with the amendments made to the Clean Air Act in SAFETEA–LU. Though the language added to the Clean Air Act to describe the SIP approval trigger is slightly different than EPA's regulation, EPA believes that 40 CFR 93.104(e)(2) is already consistent with the law's requirements without any other changes.

Clean Air Act 176(c)(2)(E)(ii) states that conformity must be determined when EPA approves a SIP that establishes a budget ''if that budget has not yet been determined to be adequate * * *'' The regulation at 40 CFR 93.104(e)(2) states that conformity must be determined when EPA approves a SIP that establishes a budget ''if the budget(s) from that SIP have not yet been used in a conformity determination.'' EPA believes this statement in the regulation is substantively the same as the law, because a budget from an approved SIP would have been used in a conformity determination prior to the SIP's approval only if that budget had previously been found adequate. If a budget had previously been found adequate, a clock for that budget would already have started on the effective date of EPA's adequacy finding, so no new clock would start at the time of

EPA's approval of the budget in the SIP. This interpretation is consistent with how state and local agencies have implemented 40 CFR 93.104(e)(1) and (2) for some time, and changing this language may cause confusion without adding value.

EPA also notes that no change is necessary for the point at which the two-year clocks begin. As is currently required under the conformity rule and Clean Air Act, the two-year clocks begin on the effective date of EPA's adequacy finding or the effective date of EPA's SIP approval or FIP promulgation action. (For more details regarding the triggers, see Section III. of the August 6, 2002, final rule at 67 FR 50810 and Section XIX. of the July 1, 2004, final rule, at 69 FR 40050).

V. Lapse Grace Period

A. Proposal

EPA is proposing to add a one-year grace period before a conformity lapse would occur when an area misses an applicable deadline. The applicable deadlines are those that result from:

<bullet≤ The requirements to determine conformity of a transportation plan and TIP every four years under § 93.104(b)(3) and § 93.104(c)(3) (see Section III.),

<bullet≤ The requirement to determine conformity within two years of a trigger under § 93.104(e) (see Section IV.), and

<bullet≤ The pre-SAFETEA–LU planning requirements to update a transportation plan every three years, and update a TIP every two years, during the transition to SAFETEA–LU's four-year planning cycle for transportation plans and TIPs.[2]

EPA notes that the regulatory changes discussed in Section V. of this preamble do not impact isolated rural nonattainment or maintenance areas, because these areas do not include an MPO with a transportation plan or TIP conformity determination that would lapse. Isolated rural areas continue to be covered by the requirements in 40 CFR 93.109(l).

We are also proposing a new § 93.104(f), which would provide the rules to allow projects to meet conformity requirements [3] during the lapse grace period.

<bullet≤ New § 93.104(f)(1) would clarify that non-exempt FHWA/FTA projects can be found to conform during the lapse grace period if they are included in the currently conforming transportation plan and TIP.

<bullet≤ New § 93.104(f)(2) would allow non-exempt FHWA/FTA projects to be found to conform during the lapse grace period if they were included in the most recent conforming transportation plan and TIP. However, even though EPA proposes in § 93.104(f)(2) that a project could be found to conform when the transportation plan and TIP have expired, a project must also meet DOT's planning requirements to receive federal funding or approval.

Today's rulemaking does not change how exempt projects and traffic signal synchronization projects are addressed under the transportation conformity rule. These projects are able to proceed during the lapse grace period, and for that matter during a conformity lapse, because exempt projects and traffic signal synchronization projects do not require project-level conformity determinations. EPA does not need to propose that exempt projects or traffic signal synchronization projects can proceed during the grace period because they are exempted from the requirement to determine conformity altogether, per 40 CFR 93.126 and 93.128.

In addition, EPA is also proposing to revise §§ 93.114, 93.115, and 93.121 by including a reference to § 93.104(f) to account for the lapse grace period:

<bullet≤ Section 93.114 currently requires that there be a currently conforming transportation plan and TIP at the time of project approval. EPA proposes that during the lapse grace period, there does not need to be a currently conforming plan and TIP at the time of project approval. However, EPA proposes that non-exempt projects must come from the most recent conforming transportation plan and TIP. (A project must also meet DOT's planning requirements to receive federal funding or approval. See Section V.C. below for further discussion.)

<bullet≤ Section 93.115 currently requires that non-exempt FHWA/FTA projects come from a conforming transportation plan and TIP. EPA proposes to add that during the lapse grace period, a project could come from the most recent conforming plan and TIP. (A project must also meet DOT's planning requirements to receive federal funding or approval. See Section V.C. below for further discussion.)

<bullet≤ Similarly, § 93.121 currently requires that regionally significant non-federal projects either come from the currently conforming transportation plan and TIP, or the regional emissions analysis that supports such a transportation plan and TIP. EPA proposes to add that during the lapse grace period, regionally significant non-federal projects could be approved if they are from the most recent conforming transportation plan and TIP, or the regional emissions analysis that supported the most recent conforming transportation plan and TIP.

B. Rationale

These proposed changes are necessary to make the conformity regulation consistent with the amended law and the intentions of Congress. In SAFETEA–LU, Congress amended the Clean Air Act to provide a one-year grace period before the consequences of a conformity lapse apply in section 176(c)(9) and added a definition of ''lapse'' in section 176(c)(10). The changes to the law have been in effect as of August 10, 2005. However, SAFETEA–LU's addition of paragraphs (9) and (10) to the Clean Air Act conformity provisions in section 176(c) and today's proposal do not affect other requirements not related to conformity, such as the statutory transportation planning requirements and DOT's regulations that implement them. These other requirements are unchanged by the addition of Clean Air Act sections 176(c)(9) and (10) and thus continue to apply during the lapse grace period. See Section V.C. below for further discussion.

Through SAFETEA–LU, Congress created new Clean Air Act section 176(c)(9) to provide a one-year grace period before the consequences of a conformity lapse apply. This section states that if a conformity determination for a transportation plan or TIP ''is not made by an applicable deadline and such failure is not corrected * * * within 12 months after such deadline * * *, the transportation plan shall lapse.''

Congress also added a statutory definition for the word ''lapse'' in Clean Air Act section 176(c)(10) which states, ''the term 'lapse' means that the conformity determination for a transportation plan or transportation improvement program has expired, and thus there is no currently conforming transportation plan or transportation improvement program.'' This statutory definition is generally consistent with EPA's existing definition of the word ''lapse'' in 40 CFR 93.101.

EPA concludes from these two Clean Air Act paragraphs that the conformity status of a transportation plan and TIP does not lapse for 12 months from an applicable deadline. Thus, as long as they are still valid in terms of meeting other federal requirements, the transportation plan and TIP continue to

[2] Prior to July 1, 2007, MPOs can still develop and adopt transportation plans and TIPs consistent with the ''pre-SAFETEA–LU'' requirements (see DOT's guidance at *http://www.fhwa.dot/hep/legreg.htm* for more information).

[3] By the phrase ''meet conformity requirements,'' EPA means that FHWA/FTA projects can be found to conform, and non-federal projects can be approved.

exist as the currently conforming transportation plan and TIP during the lapse grace period.

Through § 93.104(f)(1), EPA proposes that projects from the currently conforming transportation plan and TIP (or regional emissions analysis) can be found to conform during the lapse grace period. Clean Air Act section 176(c)(2)(C)(i) states,

> a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 or chapter 53 of title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—
> (i) such a project comes from a conforming plan and program.

Similarly, the existing language in Clean Air Act section 176(c)(2)(D) and § 93.121(a) allows regionally significant non-federal projects in metropolitan and donut areas to proceed during the lapse grace period if they are from a currently conforming transportation plan and TIP (or regional emissions analysis).

In the case where during the lapse grace period, the transportation plan or TIP expire (i.e., the transportation plan or TIP has reached the end of the transportation planning cycle and has not yet been updated), EPA believes that Clean Air Act sections 176(c)(2)(C)(i) and (D) are ambiguous in light of the addition of sections 176(c)(9) and (10). EPA proposes in § 93.104(f)(2) that non-exempt FHWA/FTA projects and regionally significant non-federal projects from the most recent conforming transportation plan and TIP (or regional emissions analysis) can meet conformity requirements during the lapse grace period, based on our reading of Congressional intent. (As discussed in C. of this section, although EPA interprets the added paragraphs (9) and (10) of Clean Air Act 176(c) to allow projects to meet conformity requirements without a currently conforming transportation plan and TIP, a project must also meet DOT's planning requirements to receive federal funding or approval.)

EPA believes the statute is ambiguous in the case where the transportation plan or TIP expires because on its face, Clean Air Act sections 176(c)(2)(C)(i) and (D) require a conforming transportation plan and TIP to be in place for a project to meet conformity requirements.

However, by adding sections 176(c)(9) and (10) to the Clean Air Act in SAFETEA–LU, Congress clearly meant to give areas the ability for transportation projects to meet conformity requirements when transportation plan and TIP conformity is not determined on time. Part of the definition of ''lapse'' in Clean Air Act section 176(c)(10) is that ''there is no currently conforming transportation plan or TIP.'' An area that has a conforming transportation plan and TIP is not in a lapse and thus would have no need of a lapse grace period.

If the requirement to have a conforming transportation plan and TIP in place for projects to meet conformity requirements still had to apply during the lapse grace period, the lapse grace period could only be used in certain cases. The lapse grace period could not be used at all in the case when a lapse occurs because an area's transportation plan or TIP expires.

SAFETEA–LU has made the required frequency of transportation plan updates, TIP updates, and conformity determinations to be the same. EPA believes that in the future, four-year transportation plan and TIP update cycles will likely expire at the same time as a four-year conformity deadline, because transportation plans and TIP must conform when they are adopted. Therefore, if projects could not meet conformity requirements during the lapse grace period because the transportation plan or TIP expired, (i.e., there ceases to be a currently conforming transportation plan or TIP), the effect of the lapse grace period in these cases would be nil. In effect, if Clean Air Act sections 176(c)(2)(C)(i) and (D) must apply during the lapse grace period in all cases, the lapse grace period could rarely be used in practice.

Because the statute is ambiguous in this case, EPA turns to the legislative history to clarify Congressional intent. The SAFETEA–LU conference report language states:

> During the 12-month grace period, only transportation projects in the most recent conforming plan and TIP could be funded or approved until the required determinations are made pursuant to Section 176(c) of the Clean Air Act.[4]

The report language says that projects from the ''most recent conforming plan and TIP'' can be funded or approved during the lapse grace period. It does not say that a currently conforming transportation plan and TIP need to be in place at the time of project approval. EPA concludes from this language that Congress meant to allow conformity requirements to be met for projects during the lapse grace period even if there is no conforming transportation plan and TIP at that time.

In other words, based on the legislative history, EPA interprets the lapse grace period established in Clean Air Act section 176(c)(9) as a time where the Clean Air Act section 176(c)(2)(C)(i) and (D) requirements for a project to come from a currently conforming transportation plan and TIP (or regional emissions analysis) could be met if the project comes from the most recent conforming transportation plan and TIP (or regional emissions analysis). In sum, the addition of Clean Air Act section 176(c)(9) allows a project to meet conformity requirements during the grace period as long as the project was in the ''most recent conforming plan and TIP'' (or in the regional emissions analysis that supported the most recent conforming transportation plan and TIP) prior to the start of the lapse grace period.

Note, however, that EPA believes this conclusion only applies to transportation conformity—what Congress included in section 176(c) of the Clean Air Act and discussed in its report language referenced above pertain only to transportation conformity requirements, not to DOT's transportation planning requirements. DOT and EPA agree that planning requirements still must be met during the lapse grace period in order for DOT to fund or approve a project as discussed further in C. of this section.

Finally, EPA believes that today's proposal would be consistent with the Clean Air Act's general goals to ensure that the air quality impacts of projects are considered prior to meeting conformity requirements. These goals are accomplished by ensuring that the regional and localized emissions impacts of projects have been considered prior to meeting conformity requirements. Again, in order for a project to meet conformity requirements during the lapse grace period, the project's regional emissions impacts would have already been considered in the conformity determination for the current or most recent transportation plan and TIP. Project-level conformity requirements—including any applicable hot-spot requirements—must also be met during the lapse grace period.

C. How Does the Grace Period Work in Practice?

The one-year conformity lapse grace period begins when the conformity determination required for a transportation plan or TIP is not made by the applicable deadline. As described above, during the grace period, a project may meet conformity requirements as

[4] Joint Explanatory Statement of the Committee of Conference, ''Section 6011, Transportation Conformity,'' p. 1060.

long as it was included in either the currently conforming transportation plan and TIP or the most recent conforming transportation plan and TIP and other project-level conformity requirements are met.

An FHWA/FTA project must also meet DOT's planning requirements to receive federal funding or approval. Specifically, 23 U.S.C. 134(j)(3) and 49 U.S.C. 5303(j)(3) require a TIP to be in place and 23 U.S.C. 135(g)(4) and 49 U.S.C. 5304(g)(4) require a statewide TIP (STIP) to be in place for DOT to authorize transportation projects. The STIP contains all of the metropolitan area TIPs in the state.

Three specific scenarios are presented below to show how expiration of the transportation plan and/or STIP/TIP at the time of the missed deadline affects the ability to advance FHWA/FTA projects during the lapse grace period. These scenarios are consistent with those highlighted in EPA and DOT's joint February 14, 2006, guidance entitled, ''Interim Guidance for Implementing the Transportation Conformity Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).''

Scenario 1: If the transportation plan has expired, but the STIP/TIP are still in effect, FHWA/FTA can continue to authorize and take action on projects in the STIP/TIP throughout the duration of the grace period or the duration of the STIP/TIP, whichever is shorter. The TIP and affected portion of the STIP cannot be amended once the transportation plan expires. Prior to transportation plan expiration, an MPO and state should ensure that the STIP/TIP include the desired projects from the transportation plan to continue to operate during the conformity lapse grace period.[5]

Scenario 2: If the transportation plan is still in effect, but the STIP/TIP have expired, FHWA/FTA cannot authorize FHWA/FTA projects. In order to advance projects, a new STIP/TIP would have to be developed that contains only projects that are consistent with the transportation plan. A conformity determination would have to be made for the new TIP unless it includes only exempt projects, traffic signal synchronization projects, or TCMs in an approved SIP. For example, if a new TIP included a non-exempt project from later years of the transportation plan, the new TIP would require a conformity determination. (However, the determination could rely on the previous regional emissions analysis as long as the requirements of 40 CFR 93.122(g) are met.)

Scenario 3: If both the transportation plan and the STIP/TIP have expired, FHWA/FTA will not authorize projects under the planning regulations.

Regardless of the scenario, in addition to transportation planning requirements, project-level conformity requirements must also be met during the lapse grace period including any required hot-spot analysis. Refer to the Table 1 in 40 CFR 93.109 for the conformity criteria and procedures that apply to projects.

D. Newly Designated Nonattainment Areas

The new lapse grace period provision in Clean Air Act section 176(c)(9) does not apply to the deadline for newly designated nonattainment areas to make the initial transportation plan/TIP conformity determination within 12 months of the effective date of the nonattainment designation. The new grace period in Clean Air Act section 176(c)(9) applies prior to when a lapse occurs, and Clean Air Act section 176(c)(10) and 40 CFR 93.101 define the term lapse to mean that the conformity determination for a transportation plan or TIP has expired. Therefore, the lapse grace period does not apply unless an area has already had a conforming transportation plan and TIP that has expired; it does not apply to a newly designated area that has not yet made its initial conformity determination for a transportation plan and TIP for a new pollutant or air quality standard.

Although the lapse grace period does not apply to newly designated areas, these areas already have similar existing flexibility because Clean Air Act section 176(c)(6) and 40 CFR 93.102(d) give newly designated areas one year before conformity applies, starting from the effective date of final nonattainment designation.[6]

Although the statutory and regulatory definitions of lapse do not apply to newly designated areas, once conformity applies, the identical restrictions of a conformity lapse will exist for any newly designated nonattainment area that does not have a conforming transportation plan and TIP in place one year after the effective date of EPA's designation. EPA and DOT will continue to use the term ''lapse'' informally to describe these situations.

E. Conformity Freezes

EPA also notes in the preamble to today's proposal the interaction of conformity lapse grace periods and conformity freezes. A conformity freeze occurs if EPA disapproves a control strategy SIP without a protective finding for the budgets in that SIP (see § 93.120(a)(2)).[7] During a freeze, some projects can be advanced, but the area cannot adopt a new transportation plan or TIP until a new SIP is submitted with budgets that EPA approves or finds adequate. If conformity of a transportation plan and TIP has not been determined using a new control strategy SIP with budgets that EPA approves or finds adequate within two years of EPA's SIP disapproval, highway sanctions apply (under Clean Air Act section 179(b)(1)) and the freeze becomes a lapse.

Under today's proposal, the lapse grace period would apply during a freeze only if the transportation plan/TIP expire before highway sanctions apply. The lapse grace period would apply in this case because the grace period applies when an area misses an applicable deadline to determine conformity for the transportation plan and TIP. The transportation plan and TIP would remain in a freeze even once the lapse grace period begins, and would remain frozen until either a conformity determination is made to new adequate or approved SIP budgets as described above, or highway sanctions apply.

An area that is in a conformity freeze and subsequently enters the lapse grace period would lapse at the end of the grace period (one year after the missed deadline), or when highway sanctions apply, whichever comes first. As described above, however, a project must also meet DOT's planning requirements to receive federal funding or approval during the lapse grace period.

If a freeze becomes a lapse because two years transpired from the effective date of EPA's disapproval of the SIP (when highway sanctions are applied), the area cannot use the lapse grace period. A lapse that occurs because two years have transpired since EPA's disapproval of a SIP is not a lapse that results from missing an applicable deadline to determine conformity. Thus, the lapse grace period would not apply by its own terms in this circumstance.

VI. Timeframes for Conformity Determinations

A. Overview

One of the changes Congress made via SAFETEA–LU was to add a new

[5] For example, an MPO may want to amend its TIP before the transportation plan expires to allow projects from the fifth year of the transportation plan to proceed during the lapse grace period. The conformity determination for such an amended TIP would have to be made before the lapse grace period begins, but the determination could rely on the previous regional emissions analysis as long as the requirements of 40 CFR 93.122(g) are met.

[6] This one-year grace period for newly designated areas most recently applied to the areas designated for the 8-hour ozone and $PM_{2.5}$ standards. All of these metropolitan areas have at this point determined transportation plan/TIP conformity.

[7] Such disapprovals occur infrequently; EPA has only disapproved SIPs without a protective finding in three instances since the 1997 conformity rule was promulgated.

paragraph (7) to Clean Air Act section 176(c), which provides MPOs the option to elect to shorten the period of time addressed by their transportation plan/TIP conformity determinations, or ''timeframe.'' Prior to this change, every conformity determination for a transportation plan and TIP has had to cover the entire timeframe covered by the transportation plan. Transportation plans cover a period of 20 years or longer. Because of the requirement to determine conformity of the entire transportation plan, the last year of the transportation plan has had to be analyzed in all transportation plan or TIP conformity determinations, as well as other earlier years in the timeframe of the transportation plan.

Under the amended Clean Air Act, an MPO demonstrates conformity for the entire timeframe of the transportation plan unless the MPO elects to shorten the conformity timeframe. An election to shorten the conformity timeframe could be made only after consulting with the state and local air quality agencies [8] and soliciting public comment and considering such comments. If an MPO makes this election, the conformity determination does not have to cover the entire length of the transportation plan, but in some cases an informational analysis is also required.

This provision giving areas the option to shorten their conformity timeframe took effect on August 10, 2005, when SAFETEA–LU became law. Note, however, that transportation plan/TIP conformity determinations must cover the entire length of the transportation plan unless an election is made to shorten the timeframe.

We are proposing to make several changes in the regulatory language. For some aspects of this provision, we have proposed more than one alternative. EPA's proposals for implementing this new Clean Air Act provision are organized as follows:

<bullet≤ Proposal for MPOs in areas that do not have an adequate or approved second maintenance plan (Section VI.B.).

<bullet≤ Proposal for MPOs in areas with adequate or approved second maintenance plans (Section VI.C.).

<bullet≤ Proposal for how elections are made to either shorten the conformity timeframe, or revert to the original conformity timeframe once the timeframe has been shortened (Section VI.D.).

<bullet≤ Proposal for isolated rural areas (Section VI.E.).

<bullet≤ Proposal for conformity implementation under a shortened conformity timeframe, including which years must be analyzed (Section VI.F.).

EPA solicits comments for all of these proposals as well as other information that would improve the implementation of the final rule.

B. Timeframe Covered by Conformity Determinations in Areas Without Second Maintenance Plans

1. Proposal for Metropolitan Areas

EPA is proposing that transportation plan and TIP conformity determinations would cover the timeframe of the transportation plan, unless an MPO elects to shorten the timeframe. In areas without an adequate or approved second maintenance plan (i.e., a maintenance plan addressing Clean Air Act section 175A(b)), a shortened conformity determination would address the longest of the following timeframes:

<bullet≤ The first 10-year period of the transportation plan;

<bullet≤ The latest year in the SIP (or FIP) applicable to the area that contains a motor vehicle emission budget; or

<bullet≤ The year after the completion date of a regionally significant project if the project is included in the TIP, or the project requires approval before the subsequent conformity determination.

EPA is proposing in § 93.106 that a conformity determination must cover the longest of these three timeframes.

Under this proposal, the MPO would not be able to choose which of these three timeframes it prefers to examine in the conformity determination; it would have to examine the longest of them. The MPO would have to determine which timeframe is the longest for each conformity determination, as the longest timeframe could change from determination to determination, because for example new budgets have been established or new regionally significant projects have been added to the TIP since the previous conformity determination.

2. Rationale

The proposed changes to allow MPOs to shorten the timeframe covered by a conformity determination are necessary to make the conformity regulation consistent with the law. In SAFETEA–LU, Congress amended the Clean Air Act by adding section 176(c)(7), which allows MPOs to elect to shorten the timeframe of conformity determinations. EPA is proposing that conformity determinations cover the timeframe of the transportation plan unless the MPO makes an election because Clean Air Act section 176(c)(7)(A) specifically states, ''Each conformity determination * * * shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, * * *'' a shorter timeframe. EPA's proposal that a shortened timeframe must cover the longest of the three periods specified also comes directly from the Clean Air Act. Specifically, section 176(c)(7)(A) states that a shortened conformity determination must cover:

> The longest of the following periods: (i) The first 10-year period of any such transportation plan. (ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emissions budget. (iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

EPA has followed this statutory language in the proposed regulatory language in § 93.106.

C. Timeframe of Conformity Determinations in Areas With Second Maintenance Plans

1. Proposal for Metropolitan Areas

EPA is proposing that in areas that have an adequate or approved maintenance plan under Clean Air Act section 175A(b), transportation plan and TIP conformity determinations would cover the timeframe of the transportation plan unless an MPO elects to shorten the timeframe. Section 175A(b) of the Clean Air Act is the provision that describes the submission of a maintenance plan that covers the second ten years of the maintenance period. If the MPO elects to shorten the timeframe, transportation plan and TIP conformity determinations would cover the period of time through the end of the maintenance period, that is, the period of time covered through the

[8] The amendment to the Clean Air Act that allows areas to shorten the timeframe of conformity determinations, Clean Air Act section 176(c)(7), requires the MPO to consult with ''the air pollution control agency'' and defines this term in paragraph (E) to mean ''an air pollution control agency (as defined in section 302(b)) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.'' Clean Air Act section 302(b) states, ''The term ''air pollution control agency'' means any of the following'' and lists several kinds of agencies. Because the statute says the term means ''any'' of the listed agencies rather than all of them, EPA believes the term refers to the relevant state and local air quality agencies. In the transportation conformity process, the relevant agencies are the state and local air quality agencies that have always participated in the consultation process, pursuant to Clean Air Act section 176(c)(4)(D)(i). Therefore, EPA is using the term ''state and local air agencies'' in this preamble and proposed rule, consistent with CAA 176(c)(4)(D)(i) and 40 CFR 93.105.

second maintenance plan. This period of time is in contrast to the longest of the three periods proposed in Section VI.B. for areas that do not have an adequate or approved second maintenance plan. EPA has proposed regulatory language for shortening the timeframe in areas with second maintenance plans in § 93.106 as well.

2. Rationale

Our proposal for a shortened timeframe for metropolitan areas with an adequate or approved second maintenance plan results directly from the Clean Air Act as amended by SAFETEA–LU. Clean Air Act section 176(c)(7)(C) states that conformity determinations can be made for a shorter timeframe ''at the election of the metropolitan planning organization * * *'' Therefore, in these areas EPA proposes that conformity determinations must cover the timeframe of the transportation plan unless an election is made. The proposal that the shortened timeframe would cover through the end of the second maintenance plan also results directly from Clean Air Act section 176(c)(7)(c). This section specifically says that in areas with a second maintenance plan, a shortened conformity timeframe is ''required to extend only through the last year of the implementation plan required under section 175(A)(b)'' [sic] rather than the longest of the three periods established in Clean Air Act section 176(c)(7)(A).

D. Process for Elections

1. Proposal for Metropolitan Areas

First, before an MPO elects to shorten the conformity timeframe, EPA proposes that it would have to consult with state and local air quality planning agencies, solicit public comment, and consider those comments. EPA is proposing that consultation with the state and local air agencies would occur early in the decision-making process.

Second, EPA is also proposing that once an MPO makes an election to shorten the period of time addressed in its transportation plan/TIP conformity determinations, the election would remain in effect until the MPO elects otherwise. An MPO would make its election only once for a pollutant or pollutants and any relevant precursors, unless it chooses to elect otherwise in the future.

Third, EPA is proposing two options for how an MPO would change a previous election.

<bullet≤ Option A: Require MPOs to consult with the state and local air quality agencies, solicit public comments and consider such comments when an MPO that has elected to shorten the timeframe wants to revert back to determining conformity for the entire transportation plan length.

<bullet≤ Option B: Allow the MPO to elect to revert to covering the entire length of the transportation plan without any additional consultation or public comment.

EPA has proposed regulatory text for Option A but could finalize either option.

Finally, EPA is proposing to place the requirements to consult the state and local air quality agencies, solicit public comments, and consider these comments when electing to shorten the conformity timeframe in § 93.106, with the rest of the regulatory language for shortening the timeframe.

2. Rationale

General process. Clean Air Act section 176(c)(7)(A) and (C) are the sections of the statute that allow elections to shorten the conformity timeframe. Both of these sections allow such elections to be made only ''after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments.'' The Clean Air Act specifies consultation with the air agency and does not require concurrence.

A definition of ''air pollution control agency'' has been added at Clean Air Act section 176(c)(7)(E), which states that this term ''means an air pollution control agency (as defined in Section 302(b)) that is responsible for developing plans or controlling pollution within the area covered by the transportation plan.'' Clean Air Act section 302(b) states, ''the term 'air pollution control agency' means any of the following'' and lists several kinds of agencies. Because the statute says the term means ''any'' of the listed agencies rather than all of them, EPA believes the term refers to the relevant air quality agencies. In the transportation conformity process, the relevant agencies are the state and local air quality agencies that have regularly participated in the consultation process, pursuant to Clean Air Act section 176(c)(4)(D)(i). Therefore, EPA is using the term ''state and local air agencies'' in this preamble and in our proposal for § 93.106, consistent with the statute and 40 CFR 93.105.

EPA believes that consultation with the state and local air quality agencies on shortening the timeframe would occur in the context of the normal interagency consultation process. EPA believes that for this consultation to be meaningful, it needs to occur at an early stage in the decision-making process. Therefore, we have proposed that consultation occur when the MPO begins to consider shortening the timeframe. For example, it may be appropriate to discuss an election to shorten the conformity timeframe in the preliminary stages of developing the regional emissions analysis.

EPA is not proposing any new specific procedures for soliciting public comment. MPOs should follow their normal process for public participation regarding conformity actions for this election. MPOs are not required to revise their public participation/involvement procedures required by SAFETEA–LU section 6001(a) to address public consultation on reducing the area's conformity timeframe.

MPOs are encouraged to make their elections prior to the start of the public comment period for their subsequent conformity determination. Making the election prior to the start of the public comment period for the subsequent conformity determination ensures that the public will understand that future conformity determinations will address a shorter period of time. However, there may be instances when an MPO will want to take public comments on the election to shorten the conformity timeframe at the same time that it is taking public comment on a conformity determination. In those cases, the conformity information presented to the public should include both a regional emissions analysis reflecting the election of a shorter timeframe and a regional emissions analysis that reflects the full length of the transportation plan. EPA recommends that both a shortened and a full-length analysis be included so that the MPO can complete its conformity determination according to its desired schedule, even if it receives negative public comment about shortening the timeframe.

EPA is proposing that once an election to shorten the timeframe is made, it would remain in effect until the MPO elects otherwise, because that statement is specifically included in the statute. Clean Air Act section 176(c)(7)(D) states, ''Any election by a metropolitan planning organization under this paragraph shall continue to be in effect until the metropolitan planning organization elects otherwise.''

Changing previous elections. EPA requests comment on the two options for the process that MPOs must follow if they have shortened the conformity timeframe and want to revert back to determining conformity for the full length of the transportation plan. EPA asks commenters to consider under what circumstances, if any, would

consultation with state and local agencies and solicitation of public comment be warranted when reverting back to a full-length conformity timeframe.

Option A would require MPOs to consult with the state and local air pollution control agencies, solicit public comment, and consider any comments received before reverting to a timeframe that covers the full length of the transportation plan. This approach is an option because Clean Air Act section 176(c)(7)(D) states that a shortened timeframe remains in effect unless an MPO ''elects otherwise.'' In other instances in Clean Air Act section 176(c)(7), an ''election'' includes consultation with the state and local air quality agencies, solicitation of public comment and consideration of any comments received. Therefore, one interpretation is that an election to revert to determining conformity for the entire length of the transportation plan should also include consultation with the state and local air pollution control agencies, solicitation of public comment, and consideration of those comments.

On the other hand, one could argue that an MPO should be able to revert to the full timeframe without additional consultation with the state and local air quality agencies or solicitation and consideration of public comment, which is proposed under Option B. If an MPO wants to revert to the full timeframe, it is returning to the default requirement in Clean Air Act section 176(c)(7). One could argue that no additional consultation or public comment should be necessary to determine conformity for the full length of the transportation plan because that is the approach that has been used for conformity since 1993.

Furthermore, existing conformity requirements may be sufficient to cover the case when previous elections change. Consultation with the state and local air quality planning agencies must occur on the conformity determination anyway within the interagency consultation process. Similarly, the MPO must seek public comment on the conformity determination, according to the requirements in 40 CFR 93.105(e). By relying on these existing requirements, the MPO could be spared the additional resource costs associated with running another interagency consultation process or full public comment process for electing to revert to the full conformity timeframe.

Placement in regulatory text. Regarding the placement of requirements for state and local air quality agency consultation and public comment, EPA is proposing to include them in § 93.106 because we are proposing most of the regulatory text for implementing the provision to shorten the timeframe in this section. The main advantage of including requirements for state and local air agency consultation and public comment in this section is that it would not require any amendments to state conformity SIPs. EPA believes that it is reasonable to include these process requirements along with other timeframe requirements, because this type of consultation would only occur when the MPO is considering electing to shorten the timeframe. The proposal would also streamline the rule and eliminate redundant text.

EPA is not proposing to include these consultation requirements in § 93.105 because such a change is not required by the Clean Air Act as amended by SAFETEA–LU. In addition, doing so would force states that already have submitted or approved conformity SIPs to amend them, which could require significant state and local resources. This result would be an unfortunate coincidence, given that SAFETEA–LU streamlined the conformity SIP requirements (see Section VII. of this preamble for this discussion).

E. Isolated Rural Nonattainment and Maintenance Areas

1. Proposal

Isolated rural nonattainment and maintenance areas do not have MPOs and are not required to prepare transportation plans or TIPs. Projects in these areas are generally included in the long-range statewide transportation plan and the statewide TIP. Isolated rural areas are not ''donut areas.[9]''

EPA is proposing two options for comment:

<bullet≤ Option 1: Isolated rural areas would also have the option to shorten the timeframe covered by conformity determinations.

<bullet≤ Option 2: Isolated rural areas would not be given the option to shorten the timeframe covered by conformity determinations.

Under Option 1, EPA's proposals for isolated rural areas are parallel to the proposals for metropolitan areas in Sections VI.B. and C. That is, EPA is proposing that a conformity determination for a project in an isolated rural area would have to include a regional emissions analysis that covers the entire timeframe of the statewide transportation plan (i.e., at least 20 years), unless the area elects to shorten the timeframe.

Before an isolated rural area has an adequate or approved second maintenance plan, a conformity determination for a project in an isolated rural area that has elected to shorten the timeframe would need to include a regional emissions analysis that covers the longest of the following three timeframes:

<bullet≤ The first 10-year period of the statewide transportation plan;

<bullet≤ The latest year in the SIP (or FIP) applicable to the area that contains a motor vehicle emission budget; or

<bullet≤ The year after the completion date of a regionally significant project if that project is included in the portion of the STIP covering the area, or the project requires approval before the subsequent conformity determination.

Once an isolated rural area has an adequate or approved second maintenance plan, a conformity determination for a project in an isolated rural area that has elected to shorten the timeframe would cover the period of time through the end of the second maintenance plan.

EPA is including regulatory text for Option 1 in § 93.109(l)(2)(i) by including a reference to § 93.106(d). To finalize Option 2, EPA would simply delete this reference. EPA could finalize either option under this proposed rule.

Given that isolated rural areas do not have an MPO, EPA is proposing two options for which agency would make the election to shorten the timeframe in an isolated rural area:

<bullet≤ State DOT option: The state DOT would make the election to shorten the conformity timeframe in an isolated rural area.

<bullet≤ Project sponsor option: The project sponsor would make the election.

EPA requests comment on these two options, and asks whether there are other alternatives that would also be viable in isolated rural areas. We are including regulatory text for the state DOT option in § 93.109(l)(2)(i), however EPA could finalize either option or an alternative suggested during the comment period under this proposed rule.

EPA's proposed process requirements for isolated rural areas are exactly the same as the proposed requirements for metropolitan areas. This result is achieved because EPA is proposing in § 93.109(l)(2)(i), which addresses isolated rural areas, that references to the MPO in § 93.106(d) should be taken to mean the state DOT.

[9] Donut areas are defined as ''geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s)* * *'' (40 CFR 93.101).

2. Rationale

EPA believes it is appropriate to extend this flexibility to isolated rural areas to be consistent with how the conformity rule has been implemented in isolated rural areas. The Clean Air Act amendment made by SAFETEA–LU allowing areas to shorten their conformity timeframes does not prohibit its use in isolated rural areas.

In general, most aspects of the conformity regulation apply consistently to metropolitan and isolated rural areas. Where there are differences, the differences have given isolated rural areas additional flexibility. For example, in the 1997 conformity rule, EPA provided isolated rural areas the flexibility to choose among several tests for demonstrating conformity for years after the time period addressed by the SIP (see 40 CFR 93.109(l)(2)(ii)).

Our rationale in giving isolated rural areas the flexibility to choose among several tests for years after the time period addressed by the SIP is especially relevant to today's proposal to give these areas the ability to shorten their conformity timeframes. In the July 9, 1996, proposed rule, we stated, ''isolated rural areas generally do not have a metropolitan transportation planning process that could serve as a forum for identifying and addressing long-term growth issues in years not addressed by the SIP'' (61 FR 36121). Today's proposal to allow isolated rural areas to shorten their timeframe would also help to alleviate that concern. EPA believes that giving isolated rural areas the ability to shorten their timeframe would still ensure that projects conform.

In the 1996 proposal we also said, ''In addition, regionally significant, federally funded or approved projects usually occur infrequently in isolated rural areas. Conformity demonstrations for such areas as required by the existing conformity rule would place the burden of long-term planning on a few or even a single transportation project'' (61 FR 36121). Again, allowing isolated rural areas to shorten their timeframe could alleviate the concern that long-term planning rests on only a few or even one project, while still ensuring that a project conforms, because the timeframe must be at least as long as the year after the completion date of a regionally significant project.

Finally, an election to shorten the timeframe could not be made without consultation with the state (and where appropriate, local) air quality agency, and solicitation of public comment (as discussed above in section V.D.). Therefore, if in a particular isolated rural area there is some specific reason that a conformity determination should cover the entire length of the statewide transportation plan (i.e., at least 20 years), the state and local air quality agencies and the public has the opportunity to go on record with their concerns. For these reasons, EPA believes that it is appropriate to propose and take comment on extending the option to shorten the conformity timeframe to isolated rural areas.

Agency that makes elections. As Clean Air Act section 176(c)(7) does not specifically address isolated rural areas, EPA does not have a specific statutory provision to rely on for which entity should make an election to shorten the conformity timeframe in isolated rural areas. However, there are several reasons why EPA believes that assigning the ability to elect to shorten the conformity timeframe to the state DOT makes the most sense. First, although the state DOT is not always the project sponsor, the state DOT prepares the statewide transportation plan and the statewide TIP and therefore in this regard, the state DOT serves a function in an isolated rural area that is similar to an MPO. Second, the state DOT may be better able to coordinate the consultation necessary to make an election with the state and local air quality planning agencies and with the public than any other entity in an isolated rural area.

Assigning the ability to elect to shorten the conformity timeframe to the project sponsor may not be as workable. EPA is concerned about the possibility that in an isolated rural area, there may be more than one project sponsor, and thus it would be unclear which entity would have the ability to elect to shorten the timeframe. Other issues could also arise, such as multiple project sponsors electing to shorten the timeframe or reverting back to a longer timeframe at any given time. Such a situation could be confusing to project sponsors, air agencies, the public, and other agencies typically involved in project-level conformity determinations.

We are requesting comment on both the state DOT and project sponsor options, and soliciting input as to whether there are any other alternatives for consideration. Though commenters can simply express a preference, providing rationale for a preference is especially useful to EPA.

F. Specific Analysis Requirements Under a Shortened Timeframe

1. Proposal

EPA is proposing to include most of the necessary regulatory language for shortening the conformity timeframe within § 93.106, and is also proposing changes in §§ 93.118 and 93.119.[10]

<bullet≤ First, today's proposal would rename § 93.106, which is currently labeled ''Content of transportation plans,'' as ''Content of transportation plans and timeframe of conformity determination.''

<bullet≤ Second, EPA proposes to amend § 93.106(a)(1) to update the horizon years that apply when an area shortens the conformity timeframe. (Section 93.106(a)(1) only applies to serious, severe or extreme ozone and serious CO nonattainment areas with urbanized populations greater than 200,000.)

<bullet≤ Third, EPA is proposing changes to §§ 93.118 and 93.119 to indicate that particular years must be analyzed only if they are in the conformity timeframe and to include the requirements for any needed informational analyses.

Areas that use the budget test. In areas that have budgets that choose to shorten the timeframe, the requirements for demonstrating consistency with budgets, and analyzing specific years, would be similar to the existing conformity rule at 40 CFR 93.118(b) and (d). Under a shortened timeframe, EPA is proposing that consistency with, and an analysis for, the attainment year would be necessary only if the attainment year is both within the timeframe of the transportation plan and conformity determination. In addition, under a shortened timeframe, EPA is proposing that instead of analyzing the last year of the transportation plan for the conformity determination, the analysis would be done for the last year of the shortened timeframe.

EPA is also proposing an additional requirement for areas that do not have an adequate or approved second maintenance plan budget. In these areas, EPA is proposing that the conformity determination must be accompanied by a regional emissions analysis for the last year of the transportation plan, as well as for any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity timeframe. EPA proposes that these regional emissions analyses would be done in manner consistent with all relevant requirements of the transportation conformity regulation (e.g., 40 CFR 93.110, 93.111, and 93.122). However, these analyses would be for informational purposes only, and emissions would not have to meet the

[10] Note that the proposals in V.F. would apply to isolated rural areas as well as metropolitan areas if EPA finalizes Option 1 to allow isolated rural areas to shorten the timeframe of conformity determinations.

budgets in these years. (EPA is not proposing these information-only analysis requirements for areas with an adequate or approved second maintenance plan, for the reasons described below.)

Areas that use the interim emissions tests. In areas that do not have budgets and use the interim emissions tests, EPA is proposing that the requirements for analysis years would be similar to the existing requirements in § 93.119 that apply under a full transportation plan-length conformity determination. Under a shortened timeframe, EPA is proposing that instead of analyzing the last year of the transportation plan, the analysis would be done for the last year of the shortened timeframe.

As in our proposal for areas that use the budget test, EPA is also proposing that the conformity determination must be accompanied by a regional emissions analysis for the last year of the transportation plan in areas that use the interim emissions tests. EPA proposes that this regional emissions analysis would be for informational purposes only. There are three proposed options for what this informational regional analysis would consist of in areas that use the interim emissions tests:

<bullet≤ Option X: Emissions for the last year of the transportation plan would be estimated and be compared to the interim emissions test(s) that is used in the conformity determination (e.g., a baseline year test, or the build/no-build test), but emissions would not have to pass the test.

<bullet≤ Option Y: Emissions for the last year of the transportation plan would be estimated and compared to either interim emissions test, regardless of which interim emission test(s) are used for the conformity determination. Emissions would not have to pass the test.

<bullet≤ Option Z: Emissions for the last year of the transportation plan would be estimated, but no comparison to emissions from the baseline year or the ''no-build'' scenario would be required.

EPA's proposed regulatory language in § 93.119 could be finalized under any of these options, and other alternatives can be submitted during the comment period. EPA also requests information regarding whether the proposed options would result in useful information about future emissions for consideration by state and local agencies and the public. EPA also proposes that this regional emissions analysis would be done in manner consistent with all relevant requirements of the transportation conformity regulation (e.g., 40 CFR 93.110, 93.111, and 93.122). Note that there is no proposal for an informational regional emissions analysis for years where the interim tests were not met in a previous regional analysis, as there is for areas that use the budget test that do not have adequate or approved second maintenance plans.

2. Rationale

General. EPA is proposing these changes to the conformity regulation because SAFETEA–LU has amended the Clean Air Act to allow MPOs to shorten their conformity timeframes. EPA is following the specific requirements of the new Clean Air Act provision in today's proposal.

EPA's proposed regulatory text for required analysis years for conformity determinations with shortened timeframes is generally consistent with current practice. Given that the statute did not specify the years that must be analyzed in a conformity determination with a shortened timeframe, EPA assumes the existing conformity requirements should apply. Therefore, in areas that use the budget test, a shortened conformity determination would have to include the attainment year if it is in the timeframe of the conformity determination, similar to the existing requirement to include the attainment year if it is in the timeframe of the transportation plan. In areas that use the interim emissions test, a shortened conformity determination would include an analysis year no more than five years into the future, just as full-length conformity determinations do.

In addition, regardless of the test used under a shortened timeframe, the last year of the conformity determination would need to be analyzed. This requirement is similar to the existing one to analyze the last year of the transportation plan. Likewise, under a shortened timeframe analysis years would be no more than ten years apart, just as under a full-length conformity determination.

Areas without second maintenance plans that shorten their conformity timeframe. If the conformity timeframe is shortened in an area that does not have an adequate or approved second maintenance plan, EPA proposes that the conformity determination be accompanied by an informational analysis. EPA's proposals for the regional emissions analysis for the last year of the transportation plan, and for any year where the budgets were exceeded in a previous regional emissions analysis if that year is later than the shortened conformity timeframe, are also based in the statutory language. Clean Air Act section 176(c)(7)(B) requires that the conformity determination ''be accompanied by a regional emissions analysis'' for these years. Absent a definition for ''regional emissions analysis'' in the statute, EPA assumes that the phrase has its usual meaning in the context of transportation conformity. Therefore, EPA believes that these analyses need to be done in a manner consistent with all the relevant requirements of the conformity regulations.

This same statutory language is the reason EPA proposes that these analyses do not need to meet the required tests. The statutory language makes it clear that these emissions analyses ''accompany'' the conformity determination, and thus are not part of the conformity determination.

EPA is proposing that areas that use the interim emissions tests would only have to run an informational analysis for the last year of the transportation plan, rather than for any years where they did not pass the tests in previous conformity determination that extend beyond the shortened timeframe, as would areas that use the budget test. This result is because Clean Air Act section 176(c)(7)(B) states that these information-only regional emissions analyses are to be done ''for the last year of the transportation plan and for any year shown to exceed emissions budgets by a prior analysis, if such year extends beyond'' the end of the shortened timeframe. Areas subject to the interim emissions tests for a given pollutant or precursor do not have budgets for that pollutant or precursor. Therefore, there is no statutory requirement for these areas to perform an informational regional emissions analysis for any year other than the last year of the transportation plan.

EPA requests comment on the three options for what an information-only regional emissions analysis would consist of in an area that uses the interim emissions test. EPA believes that any of the options could be finalized under the proposed regulatory language because the statute is ambiguous regarding this requirement prior to SIP budgets being established. The statutory language states that the the regional emissions analysis that accompanies the conformity determination must be performed for the last year of the transportation plan, but does not specify that the interim emissions tests be conducted. The Congressional report language for this section states, ''Generating this information will be helpful in ensuring

that conformity is maintained,'' [11] but does not include any direction on how this goal should be met in those areas that use the interim emissions tests.

EPA believes Option X could meet this goal because using the same test or tests as the conformity determination, whether it is the baseline year test, the build/no-build test, or both, would reveal whether or not the emissions from the last year of the transportation plan would meet that test or tests. Although the conformity test would not be required to be met, using the same test as in the conformity determination for the informational analysis provides similar information as in the conformity determination and is a format that is familiar to reviewers. The additional information—emissions in the baseline year and/or emissions from the no-build scenario—may be helpful to inform state and local agencies and the public about emissions trends beyond the conformity determination's timeframe. In addition, Option X is similar to the requirement Congress included for the informational analysis in areas that have a budget, in that the area would use the same test(s) used for the conformity determination as a comparison.

Option Y, estimating emissions from planned and existing projects in the last year of the transportation plan and comparing them to the interim emissions test chosen by the MPO or state DOT/project sponsor, could also meet the statute's requirement. For example, under this option, an area could choose to compare emissions in the last year of the transportation plan to baseline year emissions, even if that area is using the build/no-build test to determine conformity. Option Y gives MPOs and state DOTs/project sponsors flexibility, while still informing state and local agencies and the public.

Option Z, estimating emissions from planned and existing projects in the last year of the transportation plan, without documenting whether the baseline year test is passed or performing the no-build scenario, could also meet the statute's requirement. Having future emissions projections, without performing an interim emissions test, may alone provide meaningful information for state and local agencies on future emissions trends.

EPA could finalize any of these options and will consider all comments received on these and alternate options, as well as other information and factors that could inform the final rulemaking.

[11] Joint Explanatory Statement of the Committee of Conference, ''Section 6011, Transportation Conformity,'' p. 1059.

Areas with second maintenance plans that shorten their conformity timeframe. EPA is not proposing any information-only analyses in areas with an adequate or approved second maintenance plan, given Clean Air Act section 176(c)(7)(C). The statute labels this section, which applies to areas that have an adequate or approved second maintenance plan, as ''Exception.'' EPA interprets section 176(c)(7)(C) to mean that areas with adequate or approved second maintenance plans that shorten their conformity timeframe do not have to comply with the requirements of Clean Air Act section 176(c)(7)(A) or (B), and (C) does not require any informational analyses. Therefore, EPA believes that areas with a second maintenance plan that shorten their conformity timeframe do not have to perform a regional emissions analysis for the last year of their transportation plans, or for a year shown to exceed budgets by a prior analysis, as required by Clean Air Act section 176(c)(7)(B) for other areas that have shortened their timeframe.

VII. Conformity SIPs

A. Proposal

Today's proposal would modify 40 CFR 51.390 to streamline the requirements for state conformity SIPs. A conformity SIP is different from a control strategy SIP or maintenance plan, as a conformity SIP only includes state conformity procedures and not motor vehicle emissions budgets or air quality demonstrations.

EPA is proposing to require states to submit conformity SIPs that address only the following sections of the federal rule that need to be tailored to a state's individual circumstances:

<bullet≤ 40 CFR 93.105, which addresses consultation procedures;

<bullet≤ 40 CFR 93.122(a)(4)(ii), which states that conformity SIPs must require that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in an MPO's transportation plan and TIP, and that such commitments be fulfilled; and

<bullet≤ 40 CFR 93.125(c), which states that conformity SIPs must require that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.

Prior to SAFETEA–LU, states were required to address these provisions as well as all other federal conformity rule provisions in their conformity SIPs. Most of the sections of the federal rule were required to be copied verbatim from the federal rule into a state's conformity SIP, as previously required under 40 CFR 51.390(d).

In addition, EPA is proposing to delete the requirement for states to submit conformity SIPs to DOT. States would continue to submit conformity SIPs to EPA, as required under the existing rule. EPA is also proposing to reorganize the existing conformity SIP regulatory language to improve clarity and readability. The proposed regulatory language is re-ordered to more naturally fall into three topics: Purpose and applicability, conformity implementation plan content, and timing and approvals. The proposed language retains existing requirements with appropriate modifications based on the new Clean Air Act amendment from SAFETEA-LU.

B. Rationale

EPA is primarily proposing these changes to § 51.390 to make the transportation conformity regulation consistent with the law, which has been in effect since August 10, 2005. In SAFETEA-LU, Congress amended the Clean Air Act so that states are no longer required to copy much of the federal transportation conformity rule into their SIPs. Instead, Clean Air Act section 176(c)(4)(e) now requires states to include in their conformity SIPs:

> criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to section 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement, and enforceability.

Subparagraph (D)(i) in Clean Air Act section 176(c)(4) requires EPA to write regulations that address consultation procedures to be undertaken by MPOs and DOT with state and local air quality agencies and state DOTs before making conformity determinations. EPA's regulations governing consultation are found at 40 CFR 93.105. Therefore, in effect the statute now requires states to address and tailor only the three sections of the conformity rule noted above in their conformity SIPs.

In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule, except for limited cases that are described below. EPA believes that the new conformity SIP requirements will reduce the administrative burden for state and local agencies significantly, because the new requirements will result in fewer required conformity SIP revisions in most areas.

EPA is proposing to delete the requirement for states to submit

conformity SIPs to DOT to be consistent with SAFETEA–LU's changes. In revising the Clean Air Act's previous conformity SIP requirements, Congress did not retain the previous requirement that ''each State shall submit to the Administrator and the Secretary of Transportation * * * a revision to its implementation plan * * *.'' The new statutory language in Clean Air Act section 176(c)(4)(E) does not include this previous requirement, and therefore, we are removing this requirement to reduce state and local air agency processing of their conformity SIPs. However, EPA does not believe that this proposal will substantively change DOT's involvement in conformity SIP development. The proposal does not change the existing conformity rule's requirement that EPA provide DOT with a 30-day comment period on conformity SIP revisions.

The reorganizational changes to § 51.390 that are proposed are for clarity and readability and not related to changes in the law. EPA is proposing these changes to make this section more user-friendly.

C. How Would This Proposal Impact States?

1. Areas That Never Submitted a Conformity SIP

States that never submitted a conformity SIP would only address the three provisions noted above in their conformity SIPs according to any existing conformity SIP deadline (see D. of this section below).

2. Areas That Submitted a Conformity SIP That Was Never Approved

In some cases, states have submitted conformity SIPs to EPA for approval, but EPA has not yet acted on them. These states could write their EPA Regional Office and request that EPA approve only the three provisions that are required to be included in their SIPs and that EPA take no action on the remainder of the submission. States could also leave the full conformity SIP pending before EPA for rulemaking action. However, if EPA approves the full SIP, states could not apply any subsequent changes that EPA makes to the federal rule without first revising their state conformity SIP and obtaining EPA's approval.

3. Areas With Approved Conformity SIPs

States with EPA-approved conformity SIPs that decide to eliminate the provisions that are no longer mandatory would need to revise the SIP to eliminate those provisions. EPA would have to approve the changes to a state's conformity SIP through the **Federal Register** rulemaking process. Such a SIP revision should not be controversial because the provisions are no longer required by the Clean Air Act as amended by SAFETEA–LU. In addition their elimination from a state's conformity SIP should not change conformity's implementation in practice since the federal conformity rule would apply for any provision not addressed in a state SIP. States are encouraged to work with their EPA Regional Office as early in the process as possible to ensure the SIP submittal meets all requirements and is fully approvable.

4. Areas That Submit a Partial Conformity SIP

A state may choose to submit a conformity SIP that addresses only one or two of the three required sections of the federal rule. In this situation, EPA can approve the submitted sections. However, the Clean Air Act as amended by SAFETEA–LU requires states to address all three sections in their conformity SIP, so a state that addresses only one or two of the requirements would still have an outstanding requirement.

D. When Are Conformity SIPs Due?

SAFETEA–LU did not create any new deadlines for conformity SIPs. Any nonattainment or maintenance area that has missed earlier deadlines to submit conformity SIP revisions (e.g., after previous conformity rulemakings, or new nonattainment designations) continues to be subject to these previous deadlines, but only in regard to the three provisions now required by the Clean Air Act. Two scenarios are described below.

1. Areas With Conformity SIPs That Address Only the Three Required Provisions

Once a state has an approved conformity SIP that addresses only the three sections that the Clean Air Act now requires, the state would need to revise its conformity SIP only if EPA revises one of these sections of the conformity rule, or the state chooses to revise one of these three provisions. Any future changes to the federal conformity rules beyond these three provisions would apply in all states that have only these three provisions in their approved conformity SIP.

2. Areas That Choose to Either Retain or Submit Additional Sections of the Conformity Rule

A state with a previously approved conformity SIP may decide to retain all or some of the federal rule in its SIP or a state without an approved conformity SIP could choose to submit for EPA approval all or some of the other sections of the federal rule. In such a case, the state should be aware that the conformity determinations in the state continue to be governed by the state's approved conformity SIP. Such a state would need to revise its conformity SIP when EPA makes changes to the federal rule in order to have those changes apply in the state. For more information, please refer to EPA's November 2004 Conformity SIP Guidance, which is found at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.*

VIII. Transportation Control Measure Substitutions and Additions

SAFETEA–LU section 6011(d) amended the Clean Air Act by adding a new section 176(c)(8) that establishes specific criteria and procedures for replacing TCMs in an existing approved SIP with new TCMs and adding TCMs to an approved SIP. SAFETEA–LU section 6011(g) directs EPA to ''promulgate revised regulations to implement the changes made by this section.'' EPA is proposing to revise the definition of a TCM in 40 CFR 93.101 to clarify that TCMs as defined for conformity purposes also include any TCMs that are incorporated into the SIP through this new TCM substitution and addition process. However, EPA is not proposing regulatory text to implement this Clean Air Act amendment. EPA has determined that revising the transportation conformity regulations is not necessary to implement the TCM substitution and addition provision.

EPA based its determination that implementing regulations are not necessary on three factors. First, Clean Air Act section 176(c)(8) contains sufficient detail to allow the provision to be implemented without further regulation. This section specifies the requirements for TCM substitutions and additions. It establishes the procedures for ensuring that substitute TCMs provide equal or greater emissions reductions than the TCMs that are being replaced. It also establishes the process for concurrence on the substitution or addition by the state air agency and EPA. Finally, it ensures that the state and EPA maintain up-to-date information on the TCMs in approved SIPs so that the public is aware of the TCMs that are to be implemented. Regulatory language to implement this provision would merely duplicate the language already included in the Clean Air Act.

Second, regulatory changes are needed to address the other Clean Air

Act amendments made by SAFETEA–LU (e.g., the frequency of conformity determinations and the lapse grace period) because the existing transportation conformity regulation is inconsistent with the revised Clean Air Act. However, no such inconsistency exists for the TCM substitution and addition provision because the transportation conformity regulation has never addressed the substitution or addition of TCMs to approved SIPs. Therefore, the detailed criteria and procedures for TCM substitutions and additions contained in Clean Air Act section 176(c)(8) can be relied on without any conflict with the regulation.

Third, if EPA were to establish regulations to implement the Clean Air Act amendment addressing TCM substitution and addition, those provisions would not be incorporated into the transportation conformity regulations in 40 CFR part 93. While the TCM substitution and addition provision appears in Clean Air Act section 176(c) which establishes conformity requirements, the provision actually establishes a process by which an area can revise its approved SIP. Therefore, if regulations were written to implement this provision, they would appear in either 40 CFR part 51 or 52, which govern SIP actions. However, EPA typically issues guidance rather than regulations for statutory requirements related to SIPs where the agency concludes that statutory language can be implemented without regulations. EPA's decision not to propose regulatory text to implement the TCM substitution and addition provision is consistent with EPA's past practice for SIP requirements.

EPA and DOT issued joint guidance on February 14, 2006, on the implementation of all of the Clean Air Act amendments made by SAFETEA–LU. This guidance clarified EPA and DOT expectations for how TCM substitutions and additions are to be carried out by state and local agencies. State and local agencies considering TCM substitutions or additions should review this guidance and consult with their local EPA, FHWA and FTA offices. The guidance is available at: *http://www.epa.gov/otaq/stateresources/transconf/420b06901.pdf.*

Clean Air Act section 176(c)(8) requires that the EPA Administrator consult and concur on TCM substitutions and additions. However, as has been done with most other responsibilities related to the approval of SIP revisions, EPA believes that this authority may be delegated from the Administrator to the Regional Administrators and in some cases to other levels of management in the EPA Regional Offices. In the February 2006 joint guidance described above we indicated that EPA intended to prepare a delegation of authority for these responsibilities that, when finalized, would enable EPA Regional Administrators to consult and concur on TCM substitutions and additions. On September 29, 2006, the EPA Administrator signed the subject delegation of authority (Delegation of Authority 7–158: Transportation Control Measure Substitutions and Additions). As of that date, EPA Regional Administrators have the authority to consult and concur on TCM substitutions and additions. The delegation of authority allows the Regional Administrators to further delegate these responsibilities to the regional air division directors, but no further.

IX. Categorical Hot-spot Findings for Projects in Carbon Monoxide Nonattainment and Maintenance Areas

A. Background

The conformity rule currently requires a hot-spot analysis to be completed for all project-level conformity determinations in CO nonattainment and maintenance areas (40 CFR 93.116 and 93.123(a)). A CO hot-spot analysis is an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to the CO national ambient air quality standards (''standards'') (40 CFR 93.101). A hot-spot analysis assesses air quality impacts on a scale smaller than the entire nonattainment or maintenance area, such as a congested roadway intersection.

The current conformity rule requires that a CO hot-spot analysis shows that a non-exempt FHWA/FTA project does not cause any new violations of the CO standards or increase the frequency or severity of existing violations (40 CFR 93.116(a)). Until a CO attainment demonstration or maintenance plan is approved, non-exempt FHWA/FTA projects must also meet the 40 CFR 93.116(b) requirement to eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project. Today's proposal would not amend these existing requirements.

The type of CO hot-spot analysis varies depending on the type of project involved. Section 93.123(a)(1) currently requires quantitative hot-spot analyses for projects of most concern; section 93.123(a)(2) requires either a quantitative or qualitative hot-spot analysis for all other projects. Today's proposal would not amend what projects are covered by these existing requirements.

Hot-spot analyses are also required for certain projects in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. The current conformity rule allows DOT, in consultation with EPA, to make a ''categorical hot-spot finding'' in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas if there is appropriate modeling that shows that a particular category of highway or transit projects will meet applicable Clean Air Act conformity requirements without further analysis (40 CFR 93.123(b)(3)). If DOT makes such a finding, then no further hot-spot analysis to meet 40 CFR 93.116(a) is needed for any project that fits the category addressed by the finding. A project sponsor would simply reference a categorical hot-spot finding in the project-level conformity determination to meet hot-spot analysis requirements. See EPA's March 10, 2006, final rule for further information (71 FR 12502–12506) on categorical hot-spot findings in $PM_{2.5}$ or PM_{10} areas.

B. Proposal

Today's proposal would extend this current PM provision for categorical hot-spot findings to CO nonattainment and maintenance areas. The proposal would allow DOT, in consultation with EPA, to make categorical hot-spot findings for appropriate cases in CO nonattainment and maintenance areas if appropriate modeling shows that a type of highway or transit project does not cause or contribute to a new or worsened local air quality violation of the CO standards, as required under 40 CFR 93.116(a).[12] The regulatory text for today's proposal can be found in § 93.123(a)(3).

Any DOT categorical hot-spot finding would have to be supported by a credible quantitative modeling demonstration showing that all potential projects in a category satisfy statutory requirements without further hot-spot analysis. Such modeling would need to be derived in consultation with EPA, and consistent with EPA's existing CO quantitative hot-spot modeling requirements, as described in 40 CFR 93.123(a). Modeling used to support a categorical hot-spot finding could consider the emissions produced from a category of projects based on potential project sizes, configurations, and levels of service. Under the proposed

[12] As discussed further below, categorical hot-spot findings under the proposal could not be used to meet 40 CFR 93.116(b) requirements in the limited number of CO areas without approved attainment demonstrations or maintenance plans.

regulatory language, modeling could also consider the emissions produced by a category of projects and the resulting impact on air quality under different circumstances.

The proposal would not affect the requirement for conformity determinations to be completed for all non-exempt projects in CO areas. The modeling on which a categorical finding is based would serve to fulfill the hot-spot analysis requirements for qualifying projects. The modeled scenarios used by DOT to make categorical hot-spot findings would be derived through consultation and participation by EPA.

Existing interagency consultation procedures for project-level conformity determinations would also be followed (40 CFR 93.105). Any project-level conformity determination that relied on a categorical hot-spot finding would also be subject to existing public involvement requirements, during which commenters could address all appropriate issues relating to the categorical findings used in the conformity determination. See D. of this section for further information on how EPA and DOT would implement the proposal.

C. Rationale

EPA believes it is both appropriate and in compliance with the Clean Air Act to propose that DOT make categorical hot-spot findings where modeling shows that such projects will not cause or contribute to new or worsened air quality violations. As long as modeling shows that all potential projects in a category meet the current conformity rule's hot-spot requirements (40 CFR 93.116(a))—either through an analysis of a category of projects or a hot-spot analysis for a single project—then certain Clean Air Act conformity requirements are met.

Clean Air Act section 176(c)(1)(B) is the statutory criterion that must be met by all projects in CO nonattainment and maintenance areas that are subject to transportation conformity. Section 176(c)(1)(B) states that federally-supported transportation projects must not ''cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.''

EPA is not proposing to amend the existing CO hot-spot requirements in 40 CFR 93.116(a) that ensure areas meet Clean Air Act section 176(c)(1)(B) requirements. Categorical hot-spot findings would simply allow future information to be taken into account in an expedited manner, so that further CO hot-spot analyses are not performed on an individual basis for projects where it is determined to be unnecessary to meet certain statutory requirements. Making hot-spot findings for projects on a category basis would reduce the resource burden for state, regional and local agencies, and provide greater certainty and stability to the transportation planning process, while still ensuring that all projects meet Clean Air Act requirements.

As noted above, CO categorical hot-spot findings under today's proposal could not be used to meet an additional hot-spot requirement for CO areas without approved attainment demonstrations or maintenance plans. Clean Air Act section 176(c)(3)(B)(ii) requires projects in these CO areas to also ''eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.'' This criterion is stipulated by 40 CFR 93.109(f)(1) and 93.116(b) for FHWA/FTA projects in these CO areas. EPA believes that this criterion is more appropriately met by evaluating the unique circumstances of an individual project, rather than based on a broader analysis of a category of projects. Since most CO areas already have approved attainment demonstrations or maintenance plans, there should be limited practical impact of this aspect of today's proposal.

Whatever the case, EPA believes that the proposal would provide an opportunity to streamline hot-spot analyses in all CO areas. Those areas that are required to meet the additional hot-spot criterion would be able to take advantage of any categorical finding that applies for meeting 40 CFR 93.116(a) requirements.

Finally, today's proposal also addresses a comment that EPA received during a previous rulemaking. In the March 10, 2006, final rule, one commenter believed that the flexibility for FHWA and FTA to make $PM_{2.5}$ and PM_{10} categorical hot-spot findings should be extended to CO nonattainment and maintenance areas (71 FR 12504). EPA could not take final action on such an expansion in that rulemaking since no proposal had been provided for public comment.

D. General Implementation for Categorical Hot-spot Findings

If finalized, EPA would implement a CO categorical hot-spot finding provision similar to the implementation of $PM_{2.5}$ and PM_{10} categorical hot-spot findings, as described in the March 10, 2006, final rule. A project-level conformity determination would continue to be required for all non-exempt FHWA/FTA projects in CO areas. Modeling used to support a categorical hot-spot finding would be based on appropriate motor vehicle emissions factor models, dispersion models, and EPA's existing requirements for quantitative CO hot-spot modeling as specified in 40 CFR 93.123(a)(1) (40 CFR part 51, Appendix W (Guideline on Air Quality Models)).

In the March 2006 final rule (71 FR 12505), EPA and DOT described the general process for categorical hot-spot findings to be as follows:

<bullet≤ FHWA and/or FTA, as applicable, would develop modeling, analyses, and documentation to support the categorical hot-spot finding. This would be done with early and comprehensive consultation and participation with EPA.

<bullet≤ FHWA and/or FTA would provide EPA an opportunity to review and comment on the complete categorical hot-spot finding documentation. Any comments would need to be resolved in a manner acceptable to EPA prior to issuance of the categorical hot-spot finding. Consultation with EPA on issue resolution would be documented.

<bullet≤ FHWA and/or FTA would make the final categorical hot-spot finding in a memorandum or letter, which would be posted on EPA's and DOT's respective conformity websites.

Subsequently, transportation projects that meet the criteria set forth in the categorical hot-spot finding would reference that finding in their project-level conformity determination, which would be subject to interagency consultation and the public involvement requirements of the National Environmental Policy Act (NEPA) process and the conformity rule (40 CFR 93.105(e)). The existing consultation and public involvement processes would be used to consider the categorical hot-spot finding for a particular project.

X. Deletion of Regulation 40 CFR 93.109(e)(2)(v)

EPA is proposing to eliminate a provision of the transportation conformity rule that was vacated by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense* v. *EPA, et al.*, D.C. Cir. No. 04–1291) on October 20, 2006. This provision, 40 CFR 93.109(e)(2)(v), allowed 8-hour ozone areas to use the interim emissions test(s) for conformity instead of 1-hour budgets where the interim emissions test(s) was

determined to be more appropriate to meet Clean Air Act requirements. The court vacated this provision and remanded it to EPA.

As discussed in the July 1, 2004 preamble (69 FR 40025), EPA anticipated that this provision would be used infrequently but that there would be some cases where using the interim emissions test(s) would be more appropriate to meet Clean Air Act requirements. Because of the court's decision on this provision, areas can no longer rely on § 93.109(e)(2)(v) to use an interim emissions test(s) instead of using 1-hour ozone budget(s). Such areas must now use all relevant existing 1-hour ozone budgets in future conformity determinations until 8-hour ozone emissions budgets are found adequate or are approved for a given analysis year.

EPA anticipates minimal impact from the court's decision since most 8-hour ozone areas are already either using their 1-hour or 8-hour ozone SIP budgets. EPA, in cooperation with DOT, is currently providing assistance to the limited number of areas affected by the recent court decision. For additional assistance, please contact your EPA Regional Office.

XI. Miscellaneous Revisions

A. Minor Revision to § 93.102(b)(4)

EPA is proposing a minor revision to § 93.102(b)(4), which addresses the period of time that transportation conformity applies in maintenance areas. This is the period of time during which the requirements of the conformity rule apply in an area, and not the timeframe any one conformity determination examines, as discussed in Section VI., ''Timeframes for Conformity Determinations.''

Section 93.102(b)(4) currently states that conformity applies in ''maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.'' We are proposing to clarify this section to ensure that conformity would apply in maintenance areas through the last year of their approved Clean Air Act section 175A(b) maintenance plan, unless the applicable implementation plan specifies that conformity would continue to apply beyond the end of the area's approved second 10-year maintenance plan.

EPA is only proposing to clarify § 93.102(b)(4) because the current regulation may be read to not account for the situation where a maintenance area submits a second maintenance plan that establishes a budget for a year more than 20 years beyond the date of EPA's approval of the area's redesignation request and first maintenance plan.

For example, suppose an area's redesignation request and first maintenance plan are approved in 2006 and the maintenance plan establishes budgets for 2016. This area submits a second maintenance plan that establishes budgets for 2030. Under the current regulatory language, conformity applies in this area ''for 20 years from the date EPA approves'' the area's redesignation to maintenance, i.e., until 2026, despite the fact that the area would have budgets for 2030. This result would not be consistent with the Clean Air Act, which requires that transportation activities conform to the SIP. EPA's proposed change to clarify that conformity applies through the last year of the approved second maintenance plan would ensure that conformity applies throughout the time period covered by the SIP budgets. In this example, conformity would apply until 2030.

This proposed revision should not change the implementation of conformity requirements in maintenance areas. The Clean Air Act requires that maintenance plans cover a period of 20 years from the year that EPA approves the area's redesignation request. With this proposed change, conformity would continue to apply in maintenance areas for at least 20 years beyond the date of EPA's redesignation of an area to maintenance. This clarification is consistent with EPA's intention as expressed in the preamble to the 1993 final transportation conformity rule, which stated, ''If the maintenance plan establishes emissions budgets for more than twenty years, the area would be required to show conformity to that maintenance plan for more than twenty years'' (58 FR 62206).

B. Technical Corrections to §§ 93.102(b)(2)(v) and 93.119(f)(10)

EPA is proposing corrections to §§ 93.102(b)(2)(v) and 93.119(f)(10) to change ''sulfur oxides'' to ''sulfur dioxide'' and ''SO_X'' to ''SO_2.'' In the May 6, 2005, transportation conformity final rule (70 FR 24279), EPA finalized requirements for $PM_{2.5}$ precursors. In that final rulemaking, we included ''sulfur oxides'' as one of the precursors and referred to sulfur oxides as SO_X. Since that rulemaking was finalized, EPA has proposed the $PM_{2.5}$ implementation rule (70 FR 65984) and indicated that sulfur dioxide (SO_2) would be regulated as a $PM_{2.5}$ precursor rather than all sulfur oxides. We are proposing these corrections to the transportation conformity rule in order to make it consistent with EPA's broader $PM_{2.5}$ implementation strategy. This proposed change would not impact current conformity practice.

C. Revisions to ''Table 2—Exempt Projects'' in § 93.126

EPA is proposing several minor clarifications to ''Table 2—Exempt Projects'' in § 93.126, under the category of ''Safety.'' Specifically, EPA is proposing to update the following terms:

<bullet≤ ''Hazard elimination program'' would become ''Projects that correct, improve, or eliminate a hazardous location or feature;''

<bullet≤ ''Safety improvement program'' would become ''Highway Safety Improvement Program implementation;'' and

<bullet≤ ''Pavement marking demonstration'' would become ''Pavement marking.''

EPA is proposing to update these terms to make them consistent with the terms in 23 U.S.C. 148, which has been amended by SAFETEA–LU section 1401. The revisions EPA is proposing today in Table 2 of the conformity regulation would not change the types of safety projects that are exempt from transportation conformity requirements. These revisions would only update the terminology to be consistent with the changes made by SAFETEA–LU to 23 U.S.C. 148.

In section 1401, SAFETEA–LU removed the hazard elimination program as a stand-alone program previously under 23 U.S.C. 152. Projects that were covered by the hazard elimination program are now covered under the phrase, ''Projects that correct, improve, or eliminate a hazardous road location or feature,'' as included in 23 U.S.C. 148. Therefore, EPA proposes to update this term in Table 2 of the conformity rule.

SAFETEA–LU also established the ''Highway Safety Improvement Program'' in title 23 U.S.C. 148, which includes the types of projects that were previously covered in the ''Safety Improvement Program.'' Therefore, EPA is proposing to change this term within Table 2 as well. SAFETEA–LU defines ''Highway Safety Improvement Project'' as ''a project described in the State strategic highway safety plan that—(i) Corrects or improves a hazardous road location or feature; or (ii) addresses a highway safety problem.'' Given that the Highway Safety Improvement Program is substantively the same as the prior Safety Improvement Program, EPA proposes that projects defined in 23

U.S.C. 148 under the Highway Safety Improvement Program would be exempt from transportation conformity.

Finally, ''pavement marking demonstration'' is no longer a demonstration program and the reference is out of date. However, those types of projects will continue to be exempt under the updated phrase, ''Pavement marking.'' Therefore, EPA proposes changing this term in Table 2 to be consistent with SAFETEA–LU's term.

D. Definitions

EPA is proposing revisions to the definitions of ''metropolitan planning organization (MPO)'' and ''transportation improvement program (TIP)'' to reflect the definitions in SAFETEA–LU sections 3005(a) and 6001(a). Pursuant to SAFETEA–LU, the term ''MPO'' now refers to the policy board for the organization that is designated under 23 U.S.C. 134(d) and 49 U.S.C. 5303(d). EPA is proposing to revise the definitions of these terms in § 93.101 to be consistent with the new statutory definitions. These proposed changes would have no practical impact in conformity implementation.

E. Minor Clarifications for Hot-Spot Analyses

EPA is proposing two minor clarifications to the conformity rule's hot-spot analysis provisions. Both of these proposed changes are intended to improve conformity rule implementation in light of new statutory requirements. The proposed changes would not substantively change current requirements.

First, EPA is proposing to make minor changes to §§ 93.109(l)(2)(i) and 93.116(a) to ensure that CO, PM_{10}, and $PM_{2.5}$ hot-spot analyses will continue to consider a project's air quality impact over the entire timeframe of the transportation plan or long-range statewide transportation plan, as appropriate. EPA's minor change to § 93.116(a) will ensure that hot-spot analyses cover the timeframe of the transportation plan in metropolitan and donut nonattainment and maintenance areas. And the proposed addition in § 93.109(l)(2)(i) will ensure that hot-spot analyses in isolated rural areas will also examine a project's air quality impact over the timeframe of the long-range statewide transportation plan.

As discussed in Section VI., EPA is proposing several options for shortening the timeframe addressed by transportation plan and TIP conformity determinations, and in some cases, regional emissions analyses. These changes are proposed in accordance with new Clean Air Act provisions from SAFETEA–LU. The proposed changes to §§ 93.116(a) and 93.109(l)(2)(i) will ensure that project-level hot-spot analyses examine the appropriate time period, even if the timeframe of the long-range transportation plan or TIP conformity determination or regional emissions analysis is shortened. The SAFETEA–LU amendments allowing an election to shorten the timeframe covered by conformity determinations apply only to transportation plan and TIP conformity determinations, not project-level conformity determinations.

Second, EPA is proposing a technical clarification to § 93.123(b)(1)(i) to address some confusion in the field since our March 10, 2006, final rule (71 FR 12468). Section 93.123(b)(1)(i) of the current rule requires $PM_{2.5}$ or PM_{10} hot-spot analyses to be completed for ''New or expanded highway projects that have a significant number of or significant increase in diesel vehicles;* * *'' EPA is proposing to clarify this provision as ''New highway projects that have a significant number of diesel vehicles, and expanded projects that have a significant increase in the number of diesel vehicles.''

Since the March 2006 final rule was promulgated, EPA has received several questions regarding what types of new and expanded highway projects are covered by § 93.123(b)(1)(i). For example, some state and local transportation agencies have asked how the current rule's reference to a ''significant increase in diesel vehicles'' applies to new highway projects. Although DOT and EPA have answered these and other questions,[13] clarifying this provision of the conformity rule will assist planners as they implement the rule in the future. Again, today's proposal does not change the type of new or expanded highway projects that would require $PM_{2.5}$ or PM_{10} hot-spot analyses for transportation conformity purposes; we are simply clarifying the current provision through a grammatical change.

F. Minor Revision for Terms Used to Describe Transportation Plan Revisions

EPA is also proposing a minor revision to how §§ 93.104(b)(2) and 93.105(c)(1)(v) describe transportation plan changes that require conformity determinations, but are not comprehensive transportation plan updates. EPA is proposing to change references for transportation plan ''revision(s)'' to be transportation plan ''amendment(s),'' in order to be consistent with the proposed planning definitions in DOT's February 14, 2007, final transportation planning regulations (72 FR 7224). Today's proposed changes would also provide consistency between how mid-cycle transportation plan and TIP changes are currently described in the conformity rule. Section 93.104(c)(2) currently requires conformity determinations for a TIP ''amendment,'' rather than a ''revision.'' The proposal would not change the substantive requirements for when a conformity determination is required for transportation plan changes. In addition, the minor wording change to § 93.105(c)(1)(v) would not require a conformity SIP revision.

G. Minor Revision to Reference for Public Consultation Provision

EPA is proposing to update one of the references in § 93.105(e) of the conformity rule to be consistent with DOT's transportation planning regulations. Section 93.105(e) describes the procedures for consulting with the general public on conformity determinations. This provision currently refers to 23 CFR 450.316(b) of DOT's transportation planning regulations, which describes how public involvement occurs during the development of transportation plans and TIPs.

EPA is proposing to change the reference in § 93.105(e) to be 23 CFR 450.316(a), so that the conformity rule is consistent with DOT's planning regulations. In its February 14, 2007, final rule (72 FR 7224), DOT reorganized 23 CFR 450.316 to reflect the new SAFETEA–LU statute. DOT moved the public consultation procedures that EPA has historically relied upon in the conformity rule from 23 CFR 450.316(b) to 23 CFR 450.316(a). Today's proposal would simply update the conformity rule to reflect this change in the planning regulations.

Today's proposal would not change the substantive requirements for the public consultation requirements for conformity determinations. In addition, the proposal would not require a state to revise its conformity SIP, since the proposal involves an administrative change to one reference in DOT's regulations. EPA has not required conformity SIP revisions for similar reference changes in the past; the public participation requirements in existing approved conformity SIPs can be implemented as intended even if they do not reflect the most current citation in DOT's regulations.

[13] Questions and answers for $PM_{2.5}$ and PM_{10} hot-spot analysis requirements can be found at FHWA's Web site: *http://www.fhwa.dot.gov/environment/conformity/pm25faqs.htm.*

XII. 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 and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR 51.390 and part 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with SIPs developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

This action does not impose any new information collection burden or any new information collection requirements. However, the Office of Management and Budget has previously approved the information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements of EPA's existing transportation conformity rule and the proposed revisions in today's action are addressed by two information collection requests (ICRs). Requirements for carbon monoxide, PM_{10}, nitrogen dioxide, and 1-hour ozone nonattainment and maintenance areas are covered under the DOT ICR entitled, ''Metropolitan and Statewide Transportation Planning,'' with the OMB control number of 2132–0529. Requirements related to $PM_{2.5}$ and 8-hour ozone nonattainment and maintenance areas are covered by the EPA ICR entitled, ''Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects Under the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' with OMB control number 2060–0561, EPA ICR number 2130.02.

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, verifying, processing, maintaining, disclosing, and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not collect information, and a person is not required to respond to an agency's request for information unless it has a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules 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 not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's proposed 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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 by state, local, and tribal governments, in the aggregate, or by 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.

EPA has determined that this proposal itself does not contain a federal mandate that may result in expenditures of $100 million or more by state, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this proposal is to amend the conformity rule to be

consistent with Clean Air Act section 176(c) as amended by SAFETEA–LU. The Clean Air Act amendments made by SAFETEA–LU were intended to reduce the burden of demonstrating conformity in designated nonattainment and maintenance areas subject to conformity requirements. Thus, although this proposal explains how to implement these Clean Air Act amendments, it merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. Additionally, this proposal explains how to implement Clean Air Act requirements, as such it merely implements already established law that imposes conformity requirements and does not itself impose requirements.

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 proposed rule does not have federalism implications. It will not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this proposed action merely proposes to establish and revise procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

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

Executive Order 13175: ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the federal government and the Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.''

Today's proposed amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. This proposal would amend the conformity rule to be consistent with Clean Air Act section 176(c) as amended by SAFETEA–LU. The Clean Air Act amendments made by SAFETEA–LU affect nonattainment and maintenance areas subject to conformity requirements. This proposed rule does not have tribal implcations, as specified in Executive Order 13175. Accordingly, Executive Order 13175 does not apply to this rule.

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

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

This proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This proposal is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this proposal is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer and Advancement Act

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) 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., material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Parts 51 and 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: April 18, 2007.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 51 and 93 are proposed to be amended as follows:

PART 51—[AMENDED]

1. An authority citation for subpart T of part 51 is added to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart T—[Amended]

2. Section 51.390 is revised to read as follows:

§ 51.390 Implementation plan revision.

(a) *Purpose and applicability.* The federal conformity rules under part 93, subpart A, of this chapter, in addition to any existing applicable state requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as EPA approves the conformity implementation plan revision required by this subpart. A state with an area subject to this subpart and part 93, subpart A, of this chapter must submit to EPA a revision to its implementation plan which contains criteria and procedures for DOT, MPOs and other state or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with this subpart and part 93, subpart A, of this chapter. The federal conformity regulations contained in part 93, subpart A, of this chapter would continue to apply for the portion of the requirements that the state did not include in its conformity implementation plan and the portion, if any, of the state's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan conformity requirements remain enforceable until the state submits a revision to its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(b) *Conformity implementation plan content.* To satisfy the requirements of Clean Air Act section 176(c)(4)(E), the implementation plan revision required by this section must include the following three requirements of part 93, subpart A, of this chapter: § § 93.105, 93.122(a)(4)(ii), and 93.125(c). A state may elect to include any other provisions of part 93, subpart A. If the provisions of the following sections of part 93, subpart A, of this chapter are included, such provisions must be included in verbatim form, except insofar as needed to clarify or to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in this chapter: § § 93.101, 93.102, 93.103, 93.104, 93.106, 93.109, 93.110, 93.111, 93.112, 93.113, 93.114, 93.115, 93.116, 93.117, 93.118, 93.119, 93.120, 93.121, 93.126, and 93.127. A state's conformity provisions may contain criteria and procedures more stringent than the requirements described in this subpart and part 93, subpart A, of this chapter only if the state's conformity provisions apply equally to non-federal as well as federal entities.

(c) *Timing and approval.* A state must submit this revision to EPA by November 25, 1994 or within 12 months of an area's redesignation from attainment to nonattainment, if the state has not previously submitted such a revision. The state must also revise its conformity implementation plan within 12 months of the date of publication of any final amendments to § § 93.105, 93.122(a)(4)(ii), and 93.125(c) of this chapter, as appropriate. Any other portions of part 93, subpart A, of this chapter that the state has included in its conformity implementation plan and EPA has approved must be revised in the state's implementation plan and submitted to EPA within 12 months of the date of publication of any final amendments to such sections. EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. In order for EPA to approve the implementation plan revision submitted to EPA under this subpart, the plan revision must address and give full legal effect to the following three requirements of part 93, subpart A: § § 93.105, 93.122(a)(4)(ii), and 93.125(c) of this chapter. Any other provisions that are incorporated into the conformity implementation plan must also be done in a manner that gives them full legal effect. Following EPA approval of the state conformity provisions (or a portion thereof) in a revision to the state's conformity implementation plan, conformity determinations will be governed by the approved (or approved portion of the) state criteria and procedures as well as any applicable portions of the federal conformity rules that are not addressed by the approved conformity SIP.

PART 93—[AMENDED]

3. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

4. Section 93.101 is amended by:

a. Revising the definitions for ''Metropolitan planning organization (MPO)'' and ''Transportation improvement program (TIP)''; and

b. Revising the first sentence of the definition for ''Transportation control measure (TCM)''.

The revisions read as follows:

§ 93.101 Definitions.

* * * * *

Metropolitan planning organization (MPO) means the policy board of an organization created as a result of the designation process in 23 U.S.C. 134(d).

* * * * *

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan, including a substitute or additional TCM that is incorporated into the applicable SIP through the process established in CAA section 176(c)(8), that is either one of the types listed in CAA section 108, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. * * *

Transportation improvement program (TIP) means a transportation improvement program developed by a metropolitan planning organization under 23 U.S.C. 134(j).

* * * * *

§ 93.102 [Amended]

5. Section 93.102 is amended as follows:

a. In paragraph (b)(2)(v), revising ''sulfur oxides (SO_x)'' to read ''sulfur dioxide (SO_2)''; and

b. In paragraph (b)(4), revising ''for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment'' to read ''through the last year of a maintenance area's approved CAA section 175A(b) maintenance plan''.

6. Section 93.104 is amended as follows:

a. By revising paragraphs (b)(2), (b)(3), and (c)(3);

b. By revising paragraph (e) introductory text; and

c. By adding paragraph (f).

§ 93.104 Frequency of conformity determinations.

* * * * *

(b) * * *

(1) * * *

(2) All transportation plan amendments must be found to conform before the transportation plan amendments are approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes

exempt projects listed in § 93.126 or § 93.127. The conformity determination must be based on the transportation plan and the amendment taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the transportation plan, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, the existing conformity determination will lapse.

(c) * * *

(3) The MPO and DOT must determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every four years. If more than four years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the TIP, a 12-month grace period will be implemented as described in paragraph (f) of this section. At the end of this 12-month grace period, the existing conformity determination will lapse.

* * * * *

(e) *Triggers for transportation plan and TIP conformity determinations.* Conformity of existing transportation plans and TIPs must be redetermined within two years of the following, or after a 12-month grace period (as described in paragraph (f) of this section) the existing conformity determination will lapse, and no new project-level conformity determinations may be made until conformity of the transportation plan and TIP has been determined by the MPO and DOT:

* * * * *

(f) *Lapse grace period.* During the 12-month grace period referenced in paragraphs (b)(3), (c)(3), and (e) of this section, a project may be found to conform according to the requirements of this part if:

(1) The project is included in the currently conforming transportation plan and TIP (or regional emissions analysis); or

(2) The project is included in the most recent conforming transportation plan and TIP (or regional emissions analysis).

§ 93.105 [Amended]

7. Section 93.105 is amended by removing ''revisions or'' in paragraph (c)(1)(v), and by revising the reference ''23 CFR 450.316(b)'' in paragraph (e) to read as ''23 CFR 450.316(a)''.

8. Section 93.106 is amended as follows:

a. By revising the section heading;

b. By revising paragraphs (a)(1)(iii) and (iv);

c. By adding new paragraph (a)(v);

d. By redesignating paragraph (d) as paragraph (e); and

e. By adding new paragraph (d).

§ 93.106 Content of transportation plans and timeframe of conformity determinations.

(a) * * *

(1) * * *

(iii) The attainment year must be a horizon year if it is in the timeframe of the transportation plan and conformity determination;

(iv) The last year of the transportation plan's forecast period must be a horizon year; and

(v) If the timeframe of the conformity determination has been shortened under paragraph (d) of this section, the last year of the timeframe of the conformity determination must be a horizon year.

* * * * *

(d) *Timeframe of conformity determination.* (1) Unless an election is made under paragraph (d)(2) or (d)(3) of this section, the timeframe of the conformity determination must be through the last year of the transportation plan's forecast period.

(2) For areas that do not have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the transportation plan and TIP conformity determination, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(i) The shortened timeframe of the conformity determination must be the longest of the following:

(A) The tenth year of the transportation plan;

(B) The latest year in the submitted or applicable implementation plan that contains an adequate or approved motor vehicle emissions budget(s); or

(C) The year after the completion date of a regionally significant project if the project is included in the TIP or the project requires approval before the subsequent conformity determination.

(ii) The conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis, if such a year extends beyond the timeframe of the conformity determination.

(3) For areas that have an adequate or approved CAA section 175A(b) maintenance plan, the MPO may elect to shorten the timeframe of the conformity determination to extend through the last year of such maintenance plan after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

(4) Any election made by an MPO under paragraphs (d)(2) or (d)(3) of this section shall continue in effect until the MPO elects otherwise, after consultation with state and local air quality agencies, solicitation of public comments, and consideration of such comments.

* * * * *

§ 93.109 [Amended]

9. Section 93.109 is amended as follows:

a. By removing '', subject to the exception in paragraph (e)(2)(v)'' in the introductory text of paragraph (e)(2);

b. By removing paragraph (e)(2)(v); and

c. By revising in paragraph (l)(2)(i) ''§ § 93.118 and 93.119'' to read ''§ § 93.106(d), 93.116, 93.118, and 93.119'' and by adding to the end of this same paragraph, ''When the requirements of § 93.106(d) apply to isolated rural nonattainment and maintenance areas, references to ''MPO'' should be taken to mean the state department of transportation.''

10. Section 93.114 is amended by revising the introductory text to read as follows:

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval, or a project must meet the requirements in § 93.104(f) during the 12-month lapse grace period.

* * * * *

11. Section 93.115 is amended by revising the section heading and adding a new paragraph (e) to read as follows:

§ 93.115 Criteria and procedures: Projects from a transportation plan and TIP.

* * * * *

(e) Notwithstanding the requirements of paragraphs (a), (b), and (c) of this section, a project must meet the requirements of § 93.104(f) during the 12-month lapse grace period.

§ 93.116 [Amended]

12. Section 93.116 is amended by removing in paragraph (a) ''(or regional emissions analysis)''.

13. Section 93.118 is amended as follows:

a. By revising paragraph (b) introductory text;

b. By revising the first sentence in paragraph (d)(2); and

c. By adding new paragraph (d)(3) to read as follows:

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

* * * * *

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan and conformity determination), for the last year of the timeframe of the conformity determination (as described under § 93.106(d)), and for any intermediate years within the timeframe of the conformity determination as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

* * * * *

(d) * * *

(2) The regional emissions analysis may be performed for any years in the timeframe of the conformity determination (as described under § 93.106(d)) provided they are not more than ten years apart and provided the analysis is performed for the attainment year (if it is in the timeframe of the transportation plan and conformity determination) and the last year of the timeframe of the conformity determination. * * *

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan, and for any year shown to exceed motor vehicle emissions budgets in a prior regional emissions analysis (if such a year extends beyond the timeframe of the conformity determination).

* * * * *

14. Section 93.119 is amended to read as follows:

a. In paragraph (f)(10), by revising ''SO_X'' to read ''SO_2'';

b. By revising the last sentence in paragraph (g)(1); and

c. By adding new paragraph (g)(3).

§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.

* * * * *

(g) * * *

(1) * * * The last year of the timeframe of the conformity determination (as described under § 93.106(d)) must also be an analysis year.

* * * * *

(3) When the timeframe of the conformity determination is shortened under § 93.106(d)(2), the conformity determination must be accompanied by a regional emissions analysis (for informational purposes only) for the last year of the transportation plan.

* * * * *

15. Section 93.120 is amended by revising paragraph (a)(2) to read as follows:

§ 93.120 Consequences of control strategy implementation plan failures.

(a) * * *

(1) * * *

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the currently conforming TIP or that meet the requirements of § 93.104(f) during the 12-month lapse grace period may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the currently conforming TIP or that meets the requirements of § 93.104(f) during the 12-month lapse grace period may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined.

16. Section 93.121 is amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

(a) * * *

(1) The project comes from the currently conforming transportation plan and TIP (or meets the requirements of § 93.104(f) during the 12-month lapse grace period), and the project's design concept and scope have not changed significantly from those that were included in the regional emissions analysis for that transportation plan and TIP;

(2) The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (or meets the requirements of § 93.104(f) during the 12-month lapse grace period), even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those that were included in the regional emissions analysis; or

* * * * *

17. Section 93.123 is amended by adding paragraph (a)(3) and revising paragraph (b)(1)(i) to read as follows:

§ 93.123 Procedures for determining localized CO, PM_{10}, and $PM_{2.5}$ concentrations (hot-spot analysis).

(a) * * *

(3) DOT, in consultation with EPA, may also choose to make a categorical hot-spot finding that § 93.116(a) is met without further hot-spot analysis for any project described in paragraphs (a)(1) and (a)(2) of this section based on appropriate modeling. DOT, in consultation with EPA, may also consider the current air quality circumstances of a given CO nonattainment or maintenance area in categorical hot-spot findings for applicable FHWA or FTA projects.

(b) * * *

(1) * * *

(i) New highway projects that have a significant number of diesel vehicles, and expanded highway projects that have a significant increase in the number of diesel vehicles;

* * * * *

§ 93.126 [Amended]

18. Section 93.126, Table 2 is amended by revising ''Hazard elimination program'' to read ''Projects that correct, improve, or eliminate a hazardous location or feature'', ''Safety improvement program'' to read ''Highway Safety Improvement Program implementation'', and ''Pavement marking demonstration'' to read ''Pavement marking''.

[FR Doc. E7–7770 Filed 5–1–07; 8:45 am]

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Part V

Environmental Protection Agency

40 CFR Parts 9 and 35

Cooperative Agreements and Superfund State Contracts for Superfund Response Actions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 35

[FRL–8306–2]

RIN 2050–AE62

Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the regulation for Superfund Cooperative Agreements and Superfund State Contracts. The revisions to the regulation: Incorporate EPA policy changes since 1990 that impact this regulation; reduce the burden placed by this regulation on Cooperative Agreement recipients and parties to Superfund State Contracts; increase reliance on the Federal Government's uniform administrative requirements for grants and Cooperative Agreements to State and local governments, wherever possible; authorize procedures that required deviations, on multiple occasions, under the existing regulation; expressly authorize previous program initiatives that were proven successful on a pilot basis; provide additional regulatory flexibility without negatively impacting cost recovery actions; update cross-references to other regulations that have changed or been removed; and eliminate references to obsolete forms. The revisions affect States, Indian Tribes, intertribal consortia, and political subdivisions. The revisions will improve the administration and effectiveness of Superfund Cooperative Agreements and Superfund State Contracts.

DATES: This rule is effective July 2, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–SFUND–2006–0498. 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, 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 www.regulations.gov or in hard copy at the Superfund Docket, EPA/DC, EPA West, 1301 Constitution Ave., NW., Washington, DC.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Angelo Carasea, Office of Solid Waste and Emergency Response, Office of Superfund Remediation and Technology Innovation, (5204P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 603–8828, fax number: (703) 603–9112, e-mail address: *carasea.angelo@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority
II. Applicability
III. Background
IV. Description of Key Changes
V. Section-by-Section Analysis
VI. Statutory and Executive Order Reviews

Statutory Authority

This rule is issued under section 104(a)–(j) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 *et seq.*) as amended (hereinafter CERCLA).

II. Applicability

The final regulation requirements shall apply to all new Cooperative Agreements and Superfund State Contracts, funded under CERCLA, which EPA signs on or after the effective date of this regulation. EPA may agree to amend existing Cooperative Agreements or Superfund State Contracts to make the final regulation requirements applicable to work performed on and after the date EPA signs the amendment.

III. Background

CERCLA launched the nation's first centralized and substantial commitment to clean up hazardous substance sites. CERCLA, or Superfund, provided Federal authority and resources to respond directly to releases (or threatened releases) of hazardous substances, pollutants, or contaminants that could endanger human health or the environment. The law also authorized enforcement action and cost recovery from those responsible for a release of a hazardous substance.

This regulation authorizes two types of Superfund response agreements for State, Tribal (including intertribal consortium) and political subdivision participation in CERCLA implementation: Cooperative Agreements and Superfund State Contracts. These agreements ensure State and Tribal involvement, consistent with section 121 of CERCLA, 42 U.S.C. 9621 (hereinafter section 121), and section 126 of CERCLA, 42 U.S.C. 9626, (hereinafter section 126) and are used to obtain State assurances required under section 104 of CERCLA, 42 U.S.C. 9604, (hereinafter section 104) before EPA begins a remedial action.

EPA uses Cooperative Agreements to transfer funds to a State, political subdivision, or Indian Tribe that assumes responsibility as the lead or support agency for Superfund responses. Core Program Cooperative Agreements are used to fund non-site-specific activities that support a State or Indian Tribe's involvement in CERCLA responses.

A Superfund State Contract is used to document a State's CERCLA section 104 assurances when either EPA or a political subdivision has the lead role in the implementation of a remedial action. The regulation is revised to authorize, but not require, a three-party Superfund State Contract whenever a political subdivision takes the lead for a remedial action.

The role of States, Indian Tribes, and political subdivisions in Superfund has evolved substantially since 1990 when the original 40 CFR part 35 subpart O regulation was promulgated. The recipients' cleanup programs have matured and become more sophisticated. In addition, EPA has actively sought to fulfill CERCLA's mandate in sections 121 and 126 to provide States and Indian Tribes a ''substantial and meaningful involvement'' in Superfund by providing Core Program funding for the development of State and Tribal infrastructure. The current subpart O imposes more restrictive requirements on recipients than 40 CFR part 31 because, in 1990, EPA believed these requirements were necessary for enforcement and cost recovery purposes. With the maturing of State and Tribal programs, some of these added burdens have been judged to be unnecessary. In the amended subpart O, EPA allows recipients to follow the less burdensome 40 CFR part 31 requirements, wherever this is possible, without compromising cost recovery or other Superfund-specific requirements.

For example, with respect to procurement procedures, the amended subpart O eliminates the burdensome requirement for grantees to certify that their procurement systems meet the requirements of this subpart. The final regulation retains current requirements for awarding funds and tracking costs by site, activity, and operable unit, when appropriate, to ensure adequate documentation of costs. Retention of such documentation requirements will meet Superfund cost recovery requirements.

IV. Description of Key Changes

EPA made limited revisions to certain sections of the regulation. The following is a brief description of the key changes.

A. Combining Certain Activities Into a Single Cooperative Agreement

This revision enables EPA to award a single Cooperative Agreement for a single activity or multiple activities; a single activity at multiple sites; and multiple activities at multiple sites. For example, EPA may award a single Cooperative Agreement for Core Program, pre-remedial and support agency activities. EPA will not award or amend a Cooperative Agreement to a political subdivision to conduct multiple activities at multiple sites. The revised regulation requires a single Cooperative Agreement for each State, political subdivision or Indian Tribe-lead remedial action and certain removal actions.

B. Core Program

This revision provides for the maintenance of program elements previously developed using Core Program funding; however, EPA funding of the recipients' Core Program activities is dependent on the availability of EPA funds. Also this revision does not require Indian Tribes, including intertribal consortia, to meet the Core Program match requirements.

C. Indian Tribes

In light of the many and varied interests that Indian Tribes have in the Superfund cleanup process, EPA is reducing unnecessary obstacles to Tribal involvement. When EPA promulgated the current regulation, it made a policy decision to require Indian Tribes to meet the criteria at 40 CFR 300.515(b), which include establishing jurisdiction under 40 CFR 300.515(b)(3), to be eligible for any Cooperative Agreement under this subpart. The revised regulation eliminates the requirement for demonstrating jurisdiction for all Tribal Core Program and most Tribal support agency agreements. To reflect the reduced emphasis on jurisdiction and to make the regulation's language more precise, the regulation is modified in several appropriate places to delete references to Tribal ''jurisdiction,'' and refer instead to a Tribal ''area of Indian country.'' The regulation also removes cost share requirements for Core Program and support agency Cooperative Agreements. As a result, Indian Tribes have no cost share requirements under the revised regulation. Finally, an Indian Tribe will not need to acquire an interest in or accept transfer of an interest in real property acquired with CERCLA funds. This is not required under CERCLA section 104(j).

D. Intertribal Consortium

Under the revised regulation, an intertribal consortium can enter into a Cooperative Agreement with EPA. This change implements the **Federal Register** notice, ''Update to EPA Policy On Certain Grants to Intertribal Consortia,'' (See, 67 FR 67181 (November 4, 2002)). An intertribal consortium must meet the same subpart O requirements for applying for and administering a Cooperative Agreement as an Indian Tribe.

E. Progress Reports

The revised subpart O relaxes current reporting requirements that mandate quarterly reports. In the revised regulation, the EPA award official may specify that progress reports be submitted annually, semi-annually, or quarterly.

F. Five-year Review

Participation in five-year reviews of the continuing effectiveness of a remedial action is added as an eligible support agency activity.

G. Cost Share for the Support Agency

The 10 percent cost share requirement for remedial action support agency activities at EPA-lead sites is eliminated.

H. Program Income

With respect to program income, the revised regulation adds the following: ''Recoveries of Federal cost share amounts are not program income, and whether such recoveries are received before or after expiration of the Cooperative Agreement, must be reimbursed promptly to EPA.''

I. Credit Verification Procedures

EPA may use other financial reviews in lieu of an audit to verify expenditures submissions.

J. Excess Cash Cost Share Contributions/ Over Match Revisions

The recipient may direct EPA to return the excess funds or to use the over match at one site to meet the cost share obligations at another site.

K. Thresholds for Force Accounts, Small Purchases and Cost Analysis

Force accounts, small purchases, and cost analysis dollar amount thresholds are linked to the simplified acquisition threshold, as defined in the Office of Federal Procurement Policy Act (41 U.S.C. 403, Definitions). The dollar amount for the simplified acquisition threshold is currently set at $100,000.

L. Unalterable Electronic Format

An unalterable electronic format may be substituted for original records if it is performed in accordance with the technical regulations concerning Federal Government records and EPA record management requirements. The unalterable electronic format requirement replaces the microform requirement.

M. Three-Party Superfund State Contract

Under the revised regulation, the three-party Superfund State Contract is optional rather than mandatory. EPA has found that it is sometimes advantageous for the Superfund State Contract to be signed only by the State and EPA to obtain needed State CERCLA assurances, and to rely on a separate EPA Cooperative Agreement with a political subdivision. This revised regulation adds the requirement that EPA obtain State concurrence before awarding a Cooperative Agreement for remedial action to a political subdivision. EPA is making this change because EPA believes that it is important to maintain close communication and coordination with the State in all CERCLA responses.

N. Obsolete References

This revision updates cross-references to other regulations that have changed or been removed, and eliminates references to obsolete forms.

V. Section-by-Section Analysis

Section 35.6000 Authority

This section remains the same, except for a more specific citing of CERCLA.

Section 35.6005 Purpose and Scope

In paragraph (a), the word ''CERCLA-funded'', is deleted from the phrase, ''for administering CERCLA-funded Cooperative Agreements,'' and a reference to CERCLA section 104(d)(1) is added after this phrase.

Paragraph (b) is eliminated because it cites program authorities, which are not within the scope of CERCLA section 104 (a) through (j). The remaining paragraphs are resequenced to reflect deletion of paragraph (b).

Section 35.6010 Indian Tribe and Intertribal Consortium Eligibility

This section's title is changed from ''Eligibility,'' to ''Indian Tribe and Intertribal Consortium Eligibility.'' The words ''States'' and ''political subdivisions'' are removed from this section, leaving text that is devoted exclusively to Indian Tribe eligibility. The revised section adds, in paragraph (a), that an Indian Tribe is not required to demonstrate jurisdiction under 40 CFR 300.515(b)(3) of the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan or NCP) to be eligible for Core Program Cooperative Agreements, or those support agency Cooperative Agreements for which jurisdiction is not needed for the Tribe to carry out the support agency activities of the work plan. Finally, the revised section contains a new paragraph (c), which states that an intertribal consortium is eligible only if each consortium member is an eligible Tribe and that all members authorize the consortium to apply for and receive assistance.

Section 35.6015 Definitions

The following changes are made in this section.

The definition of CERCLA is shortened to refer only to the United States Code citation.

Under the Core Program Cooperative Agreement definition, the word ''support'' is replaced with the words ''develop and maintain''. This change clarifies that the Core Program funding can be made available for continuing program activities and operations. Also, the revised regulation corrects the omission of Indian Tribes from the definition in the previous regulation.

The definition of ''Indian Tribe'' is revised by adding a sentence stating that the term also includes an intertribal consortium consisting of two or more federally recognized Tribes.

The National Priorities List definition is revised to conform it with the definition in the NCP at 40 CFR 300.5.

The revised regulation defines two additional terms: (a) Intertribal consortium and (b) simplified acquisition threshold. The intertribal consortium definition is based on the definition found in EPA's revised policy concerning certain grants to intertribal consortia (*See,* 67 FR 67181 (November 4, 2002)). The simplified acquisition threshold definition is taken from 41 U.S.C. 403, Definitions.

The revised regulation deletes the definition for ''excess property.'' This term is not used in the regulation.

Section 35.6020 Requirements for Both Applicants and Recipients

The text in § 35.6020, ''Other statutory provisions'' is removed. The text in § 35.6560 is revised to provide updated references to EPA's codifications of the Government-wide debarment and suspension rules, and drug-free workplace rules; the revised section is retitled, ''Requirements for Both Applicants and Recipients,'' and renumbered as § 35.6020. Conforming amendments are made to cross-references appearing in the revised regulation at §§ 35.6550(a)(6) and 35.6610(a).

Section 35.6055 State-Lead Pre-Remedial Cooperative Agreements

In paragraph (a)(2)(i), the phrase ''project officer'' is changed to ''EPA project officer.''

Paragraphs (a)(3) to (a)(6) are deleted and replaced with a new paragraph (a)(3), which states that the applicant must submit all applicable forms and information authorized by 40 CFR 31.10.

Section 35.6060 Political Subdivision-Lead Pre-Remedial Cooperative Agreements

Paragraphs (c) and (d) are deleted. A three-party Superfund State Contract is authorized, but not required under § 35.6800.

Section 35.6105 State-Lead Remedial Cooperative Agreements

The following changes are made in this section.

In paragraph (a), a new second sentence is added to indicate that applications for additional funding need only include the revised pages. This change is consistent with 40 CFR 31.10(b)(4).

Paragraphs (a)(3) to (a)(6) are deleted and replaced with a new paragraph (a)(3) that requires the applicant to submit all applicable forms and information authorized by 40 CFR 31.10.

Several editorial changes are made to paragraphs (b)(1) and (b)(2) to conform the text to CERCLA section 104(c)(3), and to add a reference to 40 CFR 300.510(c)(1).

New text is added to paragraph (b)(5) to make clear that a State must provide the real property assurance even if the State transfers its interest to a third party or political subdivision. In addition, if the political subdivision defaults, the State will accept transfer of the interest. Finally, the new text provides that if the State or political subdivision disposes of the transferred real property, it shall comply with the requirements for real property in 40 CFR 31.31(c)(2).

Section 35.6110 Indian Tribe-Lead Remedial Cooperative Agreements

The following changes are made in this section.

In paragraph (a), the phrase, ''and, if appropriate, § 35.6105(b)(5),'' is deleted. Also, paragraph (b)(2) is deleted. An Indian Tribe will not be required to assure EPA that it will take title to, acquire interest in, or accept transfer of an interest in real property acquired with CERCLA funds. Such an assurance is not required by CERCLA section 104.

Paragraph (b)(3) is resequenced to (b)(2). The phrase ''out of jurisdiction'' is replaced with the phrase, ''out-of-an-Indian-Tribal-area-of-Indian-country''.

A new paragraph (b)(3) is added to make clear that CERCLA does not require Indian Tribes to share in the cost of CERCLA-funded remedial actions.

Section 35.6115 Political Subdivision-Lead Remedial Cooperative Agreement

The sentences under paragraph (a) are deleted and replaced with the following sentences: ''*General.* If the State concurs, EPA may allow a political subdivision with the necessary capabilities and jurisdictional authority to conduct remedial response activities at a site. EPA will award the political subdivision a Cooperative Agreement to conduct remedial response and enter into a parallel Superfund State Contract with the State if required (*See* § 35.6800, when a Superfund State Contract is required). The political subdivision may also be a signatory to the Superfund State Contract. The political subdivision must submit to the State a copy of all reports provided to EPA.''

Paragraph (b) is deleted.

The changes to paragraphs (a) and (b) are made because a three-party Superfund State Contract is authorized, but it is not required under § 35.6800.

Paragraph (c) is resequenced to paragraph (b).

Section 35.6120 Notification of the Out-of-State or Out-of-an-Indian-Tribal-Area-of-Indian-Country Transfer of CERCLA Waste

The title of § 35.6120 is changed. The phrase ''out-of-jurisdiction'' is replaced with the phrase, ''Out-of-an-Indian-Tribal-Area-of-Indian-Country.'' A corresponding change is made in

paragraph (a). In paragraph (b)(2), the phrase, ''The appropriate Indian Tribal official, who has jurisdictional authority in the area where the waste management facility is located,'' is replaced with the phrase, ''An appropriate official of an Indian Tribe in whose area of Indian country the waste management facility is located''.

Section 35.6205 Removal Cooperative Agreements

In paragraph (e), the word, ''jurisdiction,'' is replaced with the phrase, ''area of Indian country''.

Section 35.6215 Eligibility for Core Program Cooperative Agreements

In paragraph (a), the word ''support'' is replaced with the phrase ''develop and maintain.'' This change clarifies that the Core Program funding can be made available for continuing program activities and operations.

Section 35.6225 Activities Eligible for Funding Under Core Program Cooperative Agreements

In paragraph (a) and paragraph (a)(5), the word ''support'' is replaced with the phrase ''develop and maintain''. This change clarifies that the Core Program funding can be made available for continuing program activities and operations.

Section 35.6230 Application Requirements

The text in paragraph (d) is replaced with a cross-reference to 40 CFR 31.10.

Section 35.6235 Cost Sharing

Indian Tribes are not required to provide cost share for Core Program activities. This change supports EPA's objectives under EPA Policy for the Administration of Environmental Programs on Indian Reservations (located at Web site: *http://www.epa.gov/indian/pdfs/indian-policy-leavitt-pr.pdf*) to (a) take affirmative steps to encourage and assist Tribes in assuming regulatory and program management responsibilities for reservation lands, and (b) take appropriate steps to remove existing legal and procedural impediments to working directly with Tribal government programs. Further, the word ''recipient'' is changed to ''State'' since only a State is required to provide cost share for Core Program activities.

Section 35.6245 Allowable Activities

A sentence is added to clarify that a five-year review is an eligible support agency activity.

Section 35.6250 Support Agency Cooperative Agreement Requirements

In paragraph (a), the citation to ''part 29'' is corrected to read ''40 CFR part 29''. In the penultimate sentence of paragraph (a), the phrase ''with the exception of remedial action support agency activities, which require cost share and must be applied for within a site-specific budget,'' is deleted. The last sentence in this section is also deleted. States and Indian Tribes receiving a support agency Cooperative Agreement will no longer be required to develop an estimated budget for each remedial action site as this requirement was determined to be unnecessary and overly burdensome. However, State and Indian Tribe accounting systems must continue to track expenses by site, activity and operable unit as required in § 35.6270.

Section 35.6255 Cost Sharing

This section is deleted. EPA has eliminated the 10 percent cost share requirement for remedial action support agency activities at EPA-lead sites because the costs of these activities are minimal. EPA will not agree to waive the cost share requirements under support agency Cooperative Agreements that were awarded before the effective date of this rule.

Section 35.6260 Combining Cooperative Agreement Sites and Activities.

The current regulation describes specific types of Cooperative Agreements. This new section authorizes multiple activities at both single and multiple sites when the recipient demonstrates certain qualifications (i.e., administrative, technical, and financial management capabilities).

EPA will not award or amend a Cooperative Agreement to a political subdivision to conduct multiple activities at multiple sites. The revised regulation requires a single Cooperative Agreement for each remedial action and eligible removal action (i.e., a removal action that exceeds the statutory monetary ceiling or whenever a consistency waiver is likely to be sought). This approach (e.g., the combining of Core, pre-remedial, and support agency activities under a single Cooperative Agreement) has been used successfully for several years under EPA's ''Block Funding Administrative Reform.''

Section 35.6270 Standards for Financial Management Systems

In paragraph (a)(5), the two sentences are deleted and replaced with the following: ''All support agreements will be assigned a single Superfund activity code designated specifically for support agency activities. All support agency costs, however, must be documented site specifically in accordance with the terms and conditions specified in the Cooperative Agreement.''

Section 35.6280 Payments

Paragraph (a)(2) is revised to cross-reference the identical requirements in 40 CFR 31.21(i), ''Interest earned on advances.'' The only new effect of this revision is that recipients will be allowed to keep up to $100 per year for administrative expenses. *See* the last sentence of 40 CFR 31.21(i).

Section 35.6285 Recipient Payment of Response Costs

Changes to this section include:

In paragraph (c)(1), the phrase ''as defined in CERCLA section 101(24), that are consistent with the permanent remedy at the site,'' is added after the phrase ''remedial action'' to clarify the scope of activities that may be eligible for a State credit.

In paragraph (c)(1)(ii), the text is revised to indicate that after a site is listed on the NPL, the State may be eligible for credit only if the State initiated the remedial action after obtaining EPA's written approval.

In paragraph (c)(2), the phrase ''Expenditures incurred before a site is listed on the NPL'' is deleted because the credit submission requirements are the same whether the expenses were incurred before or after listing.

Paragraph (c)(2)(ii) is deleted because the requirement is addressed under (c)(1)(ii).

The title of paragraph (c)(4) is changed from ''Credit verification'' to ''Credit verification procedures.'' To ensure a timely review of State credits, the regulation is modified to permit a financial review as an alternative to an audit.

The title of paragraph (d) is changed from ''Over match'' to ''Excess cash cost share contributions/over match''. The revised paragraph gives the State the option of directing EPA to return the excess funds or to use the over match at one site to meet the cost share obligations at another site.

Section 35.6290 Program Income

A new sentence is added that states, ''Recoveries of Federal cost share amounts are not program income, and whether such recoveries are received before or after expiration of the Cooperative Agreement, must be reimbursed promptly to EPA.''

Section 35.6305 Obtaining Supplies

In the second sentence, the phrase, ''in the above listed sections'', is replaced with, ''§ § 35.6300, 35.6315(b), 35.6325 through 35.6340, and 35.6350''.

Section 35.6400 Acquisition and Transfer of Interest

The following changes are made under paragraph (a)(2):

In the first sentence, the phrase, ''or Indian Tribes to the extent of its legal authority,'' is deleted. In the second sentence, the phrase, ''and Indian Tribe,'' and the phrase, ''and 35.6110(b)(2) respectively,'' are deleted. CERCLA section 104(j) does not require an Indian Tribe to provide assurances for real property.

In the first sentence, the phrase ''of the NCP'' is appended to the citation: 40 CFR 300.510(f).

Section 35.6500 General Requirements

Under paragraph (b), the ''$25,000'' limit is changed to ''the simplified acquisition threshold.''

Section 35.6550 Procurement System Standards

Paragraphs (a)(1) through (a)(3) are replaced with a reference to 40 CFR 31.36(a), and for States, a list of the eight additional subpart O procurement paragraphs and sections with which a State recipient must comply. The last sentence of this revised paragraph lists the procurement requirements for political subdivisions and Indian Tribes.

Paragraphs (a)(4) through (a)(12) are resequenced (a)(2) through (a)(10).

Section 35.6555 Competition

Paragraph (b)(2) is revised to read: ''Any contract or subcontract awarded by an Indian Tribe or Indian intertribal consortium shall comply with the requirements of 40 CFR 31.38, 'Indian Self Determination Act'.'' The latter regulation, added to 40 CFR part 31 on January 19, 2001 (66 FR 3794), requires Indian Tribes and consortia to provide, to the extent feasible, employment preferences and training opportunities to Indians in connection with the administration of contracts and subcontracts under Federal financial assistance. In addition, award preferences are to be provided for Indian organizations and Indian-owned economic enterprises.

Section 35.6560 Master List of Debarred, Suspended, and Voluntarily Excluded Persons.

This section is removed. The text of the current § 35.6560 is revised to provide updated references to EPA's codifications of the Government-wide debarment and suspension rules and drug-free workplace rules; the revised section is retitled, ''Requirements for both applicants and recipients'', and renumbered as § 35.6020. Conforming amendments are made to cross-references appearing in § § 35.6550(a)(6) and 35.6610(a).

Section 35.6565 Procurement Methods

In paragraph (a), the ''$25,000'' limit is changed to the ''simplified acquisition threshold''.

Section 35.6585 Cost and Price Analysis

In paragraph (a)(1), the ''$25,000'' limit is changed to the ''simplified acquisition threshold''.

Section 35.6590 Bonding and Insurance

Paragraph (b) is deleted because the Agency's comprehensive guidelines on CERCLA section 119(c) indemnification are set forth in ''Superfund Response Action Contractor Indemnification,'' 58 FR 5972 (January 25, 1993). These guidelines provide that, in general, the Agency will not offer to indemnify response action contractors.

The current paragraph (c) is resequenced to paragraph (b).

Section 35.6595 Contract Provisions

Paragraph (b)(1) is amended by deleting the reference to the 1975 enactment of the Energy Policy Conservation Act and substituting a reference to the U.S. Department of Energy's regulations governing State energy conservation programs.

Paragraph (b)(2), entitled ''Violating facilities'', of § 35.6595 is deleted because it refers to the Agency's former regulations on Clean Air Act and Clean Water Act disqualifications, which were codified at 40 CFR part 15. Those statutory disqualifications and the procedures for reinstatement have been governed, since November 26, 2003 (68 FR 66544, 66620, 66622) by subpart J of 40 CFR part 32, ''Government-wide Debarment and Suspension (Nonprocurement); and Statutory Disqualification Under the Clean Air Act and Clean Water Act.'' The 40 CFR part 32 regulations apply to all EPA covered non-procurement transactions, including those under 40 CFR part 35 subpart O.

Paragraph (b)(3) is resequenced to (b)(2). Paragraph (b)(4) is resequenced to paragraph (b)(3) and revised to read, ''The recipient must comply with the requirements of 40 CFR 31.36(i)(3) through (6).'' The cross-referenced part 31 provisions specify the identical equal employment opportunity and labor requirements prescribed in paragraph (b)(3). The only effect of this revision is to eliminate the requirement that recipients include a copy of the obsolete EPA Form 5720–4 in each construction contract.

Paragraph (c), containing a requirement that recipient contracts include the model clauses described in 40 CFR 33.1030 (1987), is removed because 40 CFR part 33, ''Procurement under Assistance Agreements,'' was removed in 1996 (61 FR 6067).

Section 35.6650 Progress Reports

The section title is changed from ''Quarterly Progress Reports'' to ''Progress Reports.''

Paragraph (a) is revised to read, ''The recipient must submit progress reports as specified in the Cooperative Agreement. Progress reports will be required no more frequently than quarterly, and will be required at least annually. The reports shall be due within 30 days after the reporting period. The final progress report shall be due 90 days after expiration or termination of the Cooperative Agreement.'' In paragraph (b), the word ''quarterly'' is deleted.

Section 35.6665 Procurement Report

Paragraph (a) is removed. The Department of Labor reports are no longer used.

Section 35.6700 Project Records

In paragraph (d)(ii)(2), the ''$25,000'' limit is changed to the ''simplified acquisition threshold.''

Section 35.6705 Records Retention

The title of paragraph (c) is changed from the current ''Substitution of microform'' to ''Substitution of an unalterable electronic format.'' The first sentence of the revised paragraph (c) authorizes recipients to substitute original records with copies in an unalterable electronic format that is acceptable to EPA. The second sentence requires that such copies be produced in accordance with the Federal records requirements of 36 CFR parts 1220 through 1234 and with EPA records management requirements.

Section 35.6780 Closeout

EPA has a continuing interest in the effectiveness of completed remedies. Therefore, paragraph (c) is added, which states, ''After closeout, EPA may monitor the recipient's compliance with the assurance to provide all future operation and maintenance as required under CERCLA section 104(c) and addressed in 40 CFR 300.510(c)(1) of the NCP.''

Section 35.6800 Superfund State Contract

The title of this section is changed from ''General'' to ''Superfund State Contract.'' The introductory paragraph is rewritten to clarify that the primary purpose of the Superfund State Contract (SSC) is to ensure State and Tribal involvement and to obtain State assurances before EPA can fund remedial actions pursuant to section 104 of CERCLA. The SSC may also be utilized to document other response actions and third-party involvement.

Section 35.6805 Content of an SSC

Several changes are made to this section.

In paragraph (i)(1), the second sentence, ''The State's responsibility for operation and maintenance generally begins when EPA determines that the remedy is operational and functional or one year after construction completion, whichever is sooner (*See,* 40 CFR 300.435(f)),'' is added to clarify when the State's responsibility for operation and maintenance begins.

In paragraph (i)(4), the sentence, ''An Indian Tribe must provide assurances pursuant to § 35.6100(b)(2),'' is deleted. Indian Tribes are not required to provide real property assurances under CERLCA section 104(j).

In paragraph (j)(3), the phrase, ''Final payment must be made by completion of all activities in the site-specific Statement of Work,'' is replaced with the phrase, ''Upon completion of activities in the site-specific Statement of Work, EPA shall invoice the State for its final payment.''

The title of paragraph (q) is changed from ''Joint inspection of the remedy'' to, ''Final inspection of remedy.'' The sentences under this paragraph are deleted and replaced with the sentence, ''The SSC must include a statement that following completion of the remedial action, the State and EPA shall jointly inspect the project to determine that the remedy is functioning properly and is performing as designed.''

In paragraph (v), the phrase, ''out-of-Indian-Tribal jurisdiction,'' is replaced with the phrase, ''out-of-an-Indian-Tribal-area-of-Indian-country.''

Section 35.6815 Administrative Requirements

Under paragraph (a)(1), the sentence, ''The State or political subdivision must make payments during the course of the site-specific project and must complete payments by completion of activities in the site-specific Statement of Work,'' is deleted. The requirement is under § 35.6805(j)(3). The sentence, ''*See* § 35.6255 of this subpart for requirements concerning cost sharing under a support agency Cooperative Agreement,'' is deleted. Section 35.6255 is deleted in this revision.

Under paragraph (c)(2), the word ''quarterly'' modifying ''progress report'' is deleted.

Section 35.6820 Conclusion of the SSC

Paragraphs (a) through (c) are resequenced (a)(1) through (a)(3). In the revised paragraph (a)(3), the sentence ''undertake responsibility for O&M, and, if applicable, accept transfer in real property (*See* § 35.6805(i)(4))'' is deleted and replaced with paragraph (a)(4), containing the language, ''Assume responsibility for all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510 (c)(1) of the NCP, and if applicable, accept transfer of any Federal interest in real property (*See* § 35.6805(i)(4)).''

A new paragraph (b) is added to this section that states, ''After the administrative conclusion of the Superfund State Contract, EPA may monitor the signatory's compliance with assurances to provide all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510 (c)(1) of the NCP.''

These changes are made to help ensure long-term requirements for operation and maintenance and certain institutional controls remain in effect even after the Superfund State Contract expires.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Reviews

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0179.

This ICR authorizes the collection of information under 40 CFR part 35, subpart O, which establishes the administrative requirements for Cooperative Agreements funded under CERCLA for State, political subdivisions, and federally recognized Indian Tribal government response actions. This regulation also codifies the administrative requirements for Superfund State Contracts for non-State-lead remedial responses. This regulation includes only those provisions mandated by CERCLA, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The information is collected from applicants and/or recipients of EPA assistance and is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA requires this information to meet its Federal stewardship responsibilities. Recipient responses are required to obtain a benefit (Federal funds) under 40 CFR part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and under 40 CFR part 35, State and Local Assistance. This rule does not contain any collection of information requirements beyond those already approved. It is estimated there will be approximately 654 respondents, with an average hourly burden per response of 7.75 hours per response. This provides an estimated overall annual burden to State, local or Tribal governments of 5073 hours. There are no estimated capital or operations and maintenance costs associated with this grant rule. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved

OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because this rule pertains to grants which the APA expressly exempts from notice and comment rulemaking requirements under 5 U.S.C. 553(a)(2). Moreover, CERCLA also does not require EPA to issue a notice of proposed rulemaking prior to issuing this rule. The Agency has determined that this rule does not adversely impact small entities.

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, Federal agencies generally must prepare a written analysis, 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. Moreover, section 205 allows Federal agencies 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 promulgating a rule for which a written statement is needed, section 205 of the UMRA requires Federal agencies 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. Before a Federal agency 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 to have meaningful and timely input in the development of regulatory proposals, and informing, educating and advising small governments on compliance with the regulatory requirements.

This final rule does not include Federal mandates that may result in expenditures of $100 million or more to State, local, or Tribal governments in the aggregate, because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. States are not legally required to have or maintain a CERCLA authorized program. Therefore, today's final rule is not subject to the requirements of sections 202 or 205 of UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because participation by small governments in this program is voluntary and is funded by EPA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires Federal agencies 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.'' The Executive Order defines ''policies that have federalism implications'' 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 does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This final rule mainly makes minor changes to the regulation, under which the program has been operating since June, 1990. Apart from the minor changes, this rule adds new provisions that increase State flexibility, so it does not have federalism implications as that phrase is defined for purposes of Executive Order 13132. Further, because this is a rule that primarily conditions the use of Federal assistance, it does not impose substantial direct compliance costs on States.

EPA did consult with representatives of State governments in developing this rule. Specifically, State representatives have been participating members of the workgroup revising this rule throughout the entire process, and were given the opportunity to review and comment on drafts of this rule. Representatives from two States (Kansas and Illinois) were selected to participate in the work group meetings, and these States discussed rule options and draft rule language with EPA throughout the development of the rule. Also, the draft rule was provided to the Association of State and Territorial Solid Waste Management 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.'' Although this rule will have Tribal implications, it will not impose substantial direct compliance costs on Tribal governments, preempt Tribal law, or establish Federal standards. The Agency consulted with Tribes under its EPA Indian Policy, and in light of CERCLA sections 121 and 126 providing that Indian Tribes should have ''substantial and meaningful involvement'' in Superfund.

EPA has consulted with Tribal officials early in the process of developing this regulation to permit them to have meaningful and timely input into its development. During the early deliberations on the revisions to this rule, a Tribal representative was actively involved in the regulatory workgroup, and helped identify issues of likely concern to Tribal governments. EPA, in turn, discussed those issues with Tribal representatives participating in a concurrent initiative to enhance the State and Tribal roles in Superfund. And the rule was informed to a large extent by the experiences of Tribes and EPA during 16 years of experience working under the old regulation. Ultimately, the EPA regulatory workgroup used the knowledge gained from consultation and experience to identify and incorporate beneficial changes for Tribes into the regulation. The principal changes (discussed further in section IV), were (a) to waive the cost share requirement for Tribes receiving Core Program and support

agency Cooperative Agreement, (b) to eliminate requirements to show jurisdiction for all Core agreements and most support agency agreements, and (c) to include intertribal consortia as eligible entities to receive Cooperative Agreements. After drafting this regulation, EPA solicited input from all the federally recognized Indian Tribes and the National Tribal Environmental Council by mailing a summary explaining the Tribal portions of the revised subpart O regulation. Most recently, the Agency also discussed the proposed changes and solicited direct feedback from Indian Tribes at the 11th Annual Conference, ''Community Environmental Stewardship for the Future,'' sponsored by the Inter-Tribal Environmental Council (ITEC).

As required by section 7(a), EPA's Tribal Consultation Official has certified that the requirements of the Executive Order have been met in a meaningful and timely manner. A copy of the certification is included in the docket for this rule.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it is not ''economically significant'' as defined under Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211 (Energy Effects)

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

I. National Technology Transfer and Advancement Act

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) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. No action from this rule will have a disproportionately high and adverse human health and environmental effect on any segment of the population. In addition, this rule does not impose substantial direct compliance costs on those communities. Accordingly, the rule does not raise issues regarding Executive Order 12898.

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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). The subpart O regulation is effective July 2, 2007.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 35

Administrative practices and procedures, Environmental protection, Grant programs-environmental protection, Reporting and recordkeeping.

Dated: April 19, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR parts 9 and 35 are amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, the table is amended under the heading, ''State and Local Assistance,'' as follows:

■ a. By revising entries for ''35.6055(a)(2)'', ''35.6055(b)(1)'', ''35.6055(b)(2)(i)–(ii)'', ''35.6105(a)(2)(i)–(v), (vii)'', ''35.6120'', ''35.6145'', ''35.6155(a), (c)'', ''35.6230(a), (c)'', ''35.6300(a)(3)'', ''35.6315(c)'', ''35.6320'', ''35.6340(a)'', ''35.6350'', ''35.6500'', ''35.6550(b)(1)(iii)'', ''35.6550(b)(2)(i)'', ''35.6585'', ''35.6595(a), (b)'', ''35.6600(a)'', ''35.6650'', ''35.6655'', ''35.6660'', ''35.6665(a), (b)'', ''35.6700'',

''35.6705'', ''35.6710'', ''35.6805'', and ''35.6815(a), (c), (d)''.

■ b. By removing entries for ''35.6110(b)(2)'' and ''35.6550(a)(1)(ii)''.

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
State and Local Assistance	
35.6055(a)(2)	2050–0179
35.6055(b)(1)	2050–0179
35.6055(b)(2)(i)–(ii)	2050–0179
35.6105(a)(2)(i)–(v), (vii)	2050–0179
35.6120	2050–0179
35.6145	2050–0179
35.6155(a), (c)	2050–0179
35.6230(a), (c)	2050–0179
35.6300(a)(3)	2050–0179
35.6315(c)	2050–0179
35.6320	2050–0179
35.6340(a)	2050–0179
35.6350	2050–0179
35.6500	2050–0179
35.6550(b)(1)(iii)	2050–0179
35.6550(b)(2)(i)	2050–0179
35.6585	2050–0179
35.6595(a), (b)	2050–0179
35.6600(a)	2050–0179
35.6650	2050–0179
35.6655	2050–0179
35.6660	2050–0179
35.6665(a), (b)	2050–0179
35.6700	2050–0179
35.6705	2050–0179
35.6710	2050–0179
35.6805	2050–0179
35.6815(a), (c), (d)	2050–0179
* * * * *	

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PART 35—[AMENDED]

■ 3. Subpart O is revised to read as follows:

Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

General

Sec.
35.6000 Authority.
35.6005 Purpose and scope.
35.6010 Indian Tribe and intertribal consortium eligibility.
35.6015 Definitions.
35.6020 Requirements for both applicants and recipients.
35.6025 Deviation from this subpart.

Pre-Remedial Response Cooperative Agreements

35.6050 Eligibility for pre-remedial Cooperative Agreements.
35.6055 State-lead pre-remedial Cooperative Agreements.
35.6060 Political subdivision-lead pre-remedial Cooperative Agreements.
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35.6100 Eligibility for remedial Cooperative Agreements.
35.6105 State-lead remedial Cooperative Agreements.
35.6110 Indian Tribe-lead remedial Cooperative Agreements.
35.6115 Political subdivision-lead remedial Cooperative Agreements.
35.6120 Notification of the out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country transfer of CERCLA waste.

Enforcement Cooperative Agreements

35.6145 Eligibility for enforcement Cooperative Agreements.
35.6150 Activities eligible for funding under enforcement Cooperative Agreements.
35.6155 State, political subdivisions or Indian Tribe-lead enforcement Cooperative Agreements.

Removal Response Cooperative Agreements

35.6200 Eligibility for removal Cooperative Agreements.
35.6205 Removal Cooperative Agreements.

Core Program Cooperative Agreements

35.6215 Eligibility for Core Program Cooperative Agreements.
35.6220 General.
35.6225 Activities eligible for funding under Core Program Cooperative Agreements.
35.6230 Application requirements.
35.6235 Cost sharing.

Support Agency Cooperative Agreements

35.6240 Eligibility for support agency Cooperative Agreements.
35.6245 Allowable activities.
35.6250 Support agency Cooperative Agreement requirements.

Combining Cooperative Agreements

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Financial Administration Requirements Under a Cooperative Agreement

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35.6310 Obtaining equipment.
35.6315 Alternative methods for obtaining property.
35.6320 Usage rate.
35.6325 Title and EPA interest in CERCLA-funded property.
35.6330 Title to federally owned property.
35.6335 Property management standards.
35.6340 Disposal of CERCLA-funded property.
35.6345 Equipment disposal options.
35.6350 Disposal of federally owned property.

Real Property Requirements Under a Cooperative Agreement

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35.6405 Use.

Copyright Requirements Under a Cooperative Agreement

35.6450 General requirements.

Use of Recipient Employees (''Force Account'') Under a Cooperative Agreement

35.6500 General requirements.

Procurement Requirements Under a Cooperative Agreement

35.6550 Procurement system standards.
35.6555 Competition.
35.6565 Procurement methods.
35.6570 Use of the same engineer during subsequent phases of response.
35.6575 Restrictions on types of contracts.
35.6580 Contracting with minority and women's business enterprises (MBE/WBE), small businesses, and labor surplus area firms.
35.6585 Cost and price analysis.
35.6590 Bonding and insurance.
35.6595 Contract provisions.
35.6600 Contractor claims.
35.6605 Privity of contract.
35.6610 Contracts awarded by a contractor.

Reports Required Under a Cooperative Agreement

35.6650 Progress reports.
35.6655 Notification of significant developments.
35.6660 Property inventory reports.
35.6665 Procurement report.
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Records Requirements Under a Cooperative Agreement

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35.6705 Records retention.
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Other Administrative Requirements for Cooperative Agreements

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35.6755 Monitoring program performance.
35.6760 Enforcement and termination for convenience.
35.6765 Non-Federal audit.
35.6770 Disputes.
35.6775 Exclusion of third-party benefits.
35.6780 Closeout.
35.6785 Collection of amounts due.
35.6790 High risk recipients.

Requirements for Administering a Superfund State Contract (SSC)

35.6800 Superfund State Contract.
35.6805 Contents of an SSC.
35.6815 Administrative requirements.
35.6820 Conclusion of the SSC.

Authority: 42 U.S.C. 9601 *et seq.*

Subpart O—Cooperative Agreements and Superfund State Contracts for Superfund Response Actions

General

§ 35.6000 Authority.

This subpart is issued under section 104(a) through (j) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA)(42 U.S.C. 9601 *et seq.*).

§ 35.6005 Purpose and scope.

(a) This subpart codifies recipient requirements for administering Cooperative Agreements awarded pursuant to section 104(d)(1) of CERCLA. This subpart also codifies requirements for administering Superfund State Contracts (SSCs) for non-State-lead remedial responses undertaken pursuant to section 104 of CERCLA.

(b) 40 CFR part 31, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' establishes consistency and uniformity among Federal agencies in the administration of grants and Cooperative Agreements to State, local, and Indian Tribal governments. For CERCLA-funded Cooperative Agreements, this subpart supplements the requirements contained in part 31 for States, political subdivisions thereof, and Indian Tribes. This subpart references those sections of part 31 that are applicable to CERCLA-funded Cooperative Agreements.

(c) Superfund monies for remedial actions cannot be used by recipients for Federal facility cleanup activities. When a cleanup is undertaken by another Federal entity, the State, political subdivision or Indian Tribe can pursue funding for its involvement in response activities from the appropriate Federal entity.

§ 35.6010 Indian Tribe and intertribal consortium eligibility.

(a) Indian Tribes are eligible to receive Superfund Cooperative Agreements only when they are federally recognized, and when they meet the criteria set forth in 40 CFR 300.515(b) of the National Oil and Hazardous Substances Pollution Contingency Plan (the National Contingency Plan or NCP), except that Indian Tribes shall not be required to demonstrate jurisdiction under 40 CFR 300.515(b)(3) of the NCP to be eligible for Core Program Cooperative Agreements, and those support agency Cooperative Agreements for which jurisdiction is not needed for the Tribe to carry out the support agency activities of the work plan.

(b) Although section 126 of CERCLA provides that the governing body of an Indian Tribe shall be treated substantially the same as a State, the subpart O definition of ''State'' does not include Indian Tribes because they do not need to comply with all the statutory requirements addressed in subpart O that apply to States.

(c) Intertribal consortium: An intertribal consortium is eligible to receive a Cooperative Agreement from EPA only if the intertribal consortium demonstrates that all members of the consortium meet the eligibility requirements for the Cooperative Agreement, and all members authorize the consortium to apply for and receive assistance.

§ 35.6015 Definitions.

(a) As used in this subpart, the following words and terms shall have the following meanings:

Activity. A set of CERCLA-funded tasks that makes up a segment of the sequence of events undertaken in determining, planning, and conducting a response to a release or potential release of a hazardous substance. These include Core Program, pre-remedial (*i.e.*, preliminary assessments and site inspections), support agency, remedial investigation/feasibility studies, remedial design, remedial action, removal, and enforcement activities.

Allowable costs. Those project costs that are: Eligible, reasonable, necessary, and allocable to the project; permitted by the appropriate Federal cost principles; and approved by EPA in the Cooperative Agreement and/or Superfund State Contract.

Architectural or engineering (A/E) services. Consultation, investigations, reports, or services for design-type projects within the scope of the practice of architecture or professional engineering as defined by the laws of the State or territory in which the recipient is located.

Award official. The EPA official with the authority to execute Cooperative Agreements and Superfund State Contracts and to take other actions authorized by EPA Orders.

Budget period. The length of time EPA specifies in a Cooperative Agreement during which the recipient may expend or obligate Federal funds.

CERCLA. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601—9657).

Change order. A written order issued by a recipient, or its designated agent, to its contractor authorizing an addition to, deletion from, or revision of, a contract, usually initiated at the contractor's request.

Claim. A demand or written assertion by a contractor seeking, as a matter of right, changes in contract duration, costs, or other provisions, which originally have been rejected by the recipient.

Closeout. The final EPA or recipient actions taken to assure satisfactory completion of project work and to fulfill administrative requirements, including financial settlement, submission of acceptable required final reports, and resolution of any outstanding issues under the Cooperative Agreement and/or Superfund State Contract.

Community Relations Plan (CRP). A management and planning tool outlining the specific community relations activities to be undertaken during the course of a response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting a response action, and to assure public input into the decision-making process related to the affected communities.

Construction. Erection, building, alteration, repair, remodeling, improvement, or extension of buildings, structures or other property.

Contract. A written agreement between an EPA recipient and another party (other than another public agency) or between the recipient's contractor and the contractor's first tier subcontractor.

Contractor. Any party to whom a recipient awards a contract.

Cooperative Agreement. A legal instrument EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose in which substantial EPA involvement is anticipated during the performance of the project.

Core Program Cooperative Agreement. A Cooperative Agreement that provides funds to a State or Indian Tribe to conduct CERCLA implementation activities that are not assignable to specific sites but are intended to develop and maintain a State's or Indian Tribe's ability to participate in the CERCLA response program.

Cost analysis. The review and evaluation of each element of contract cost to determine reasonableness, allocability, and allowability.

Cost share. The portion of allowable project costs that a recipient contributes toward completing its project (i.e., non-Federal share, matching share).

Equipment. Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Fair market value. The amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. Fair market value is the price in cash, or its equivalent, for which the property would have been sold on the open market.

Health and safety plan. A plan that specifies the procedures that are sufficient to protect on-site personnel and surrounding communities from the physical, chemical, and/or biological hazards of the site. The health and safety plan outlines:

(i) Site hazards;

(ii) Work areas and site control procedures;

(iii) Air surveillance procedures;

(iv) Levels of protection;

(v) Decontamination and site emergency plans;

(vi) Arrangements for weather-related problems; and

(vii) Responsibilities for implementing the health and safety plan.

In-kind contribution. The value of a non-cash contribution (generally from third parties) to meet a recipient's cost sharing requirements. An in-kind contribution may consist of charges for real property and equipment or the value of goods and services directly benefiting the CERCLA-funded project.

Indian Tribe. As defined by section 101(36) of CERCLA, any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. For the purposes of this subpart, the term, ''Indian Tribe,'' includes an intertribal consortium consisting of two or more federally recognized Tribes.

Intergovernmental Agreement. Any written agreement between units of government under which one public agency performs duties for or in concert with another public agency using EPA assistance. This includes substate and interagency agreements.

Intertribal consortium. A partnership between two or more federally recognized Indian Tribes that is authorized by the governing bodies of those Indian Tribes to apply for and receive assistance agreements. An intertribal consortium must have adequate documentation of the existence of the partnership, and the authorization to apply for and receive assistance.

Lead agency. The Federal agency, State agency, political subdivision, or Indian Tribe that has primary responsibility for planning and implementing a response action under CERCLA.

Minority Business Enterprise (MBE). A business which is:

(i) Certified as socially and economically disadvantaged by the Small Business Administration;

(ii) Certified as a minority business enterprise by a State or Federal agency; or

(iii) An independent business concern which is at least 51 percent owned and controlled by minority group member(s). A minority group member is an individual who is a citizen of the United States and one of the following:

(A) Black American;

(B) Hispanic American (with origins from Puerto Rico, Mexico, Cuba, South or Central America);

(C) Native American (American Indian, Eskimo, Aleut, native Hawaiian); or

(D) Asian-Pacific American (with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan or the Indian subcontinent).

National Priorities List (NPL). The list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response. The NPL is published at Appendix B to 40 CFR Part 300.

Operable unit. A discrete action, as described in the Cooperative Agreement or Superfund State Contract, that comprises an incremental step toward comprehensively addressing site problems. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site. Operable units may address geographical portions of a site, specific site problems, or initial phases of an action, or may consist of any set of actions performed over time or any actions that are concurrent but located in different parts of a site.

Operation and maintenance. Measures required to maintain the effectiveness of response actions.

Personal property. Property other than real property. It includes both supplies and equipment.

Political subdivision. The unit of government that the State determines to have met the State's legislative definition of a political subdivision.

Potentially Responsible Party (PRP). Any individual(s) or company(ies) identified as potentially liable under CERCLA for cleanup or payment for costs of cleanup of Hazardous Substance sites. PRPs may include individual(s), or company(ies) identified as having owned, operated, or in some other manner contributed wastes to Hazardous Substance sites.

Price analysis. The process of evaluating a prospective price without regard to the contractor's separate cost elements and proposed profit. Price analysis determines the reasonableness of the proposed contract price based on adequate price competition, previous experience with similar work, established catalog or market price, law, or regulation.

Profit. The net proceeds obtained by deducting all allowable costs (direct and indirect) from the price. (Because this definition of profit is based on applicable Federal cost principles, it may vary from many firms' definition of profit, and may correspond to those firms' definition of ''fee.'')

Project. The activities or tasks EPA identifies in the Cooperative Agreement and/or Superfund State Contract.

Project manager. The recipient official designated in the Cooperative Agreement or Superfund State Contract as the program contact with EPA.

Project officer. The EPA official designated in the Cooperative Agreement as EPA's program contact with the recipient. Project officers are responsible for monitoring the project.

Project period. The length of time EPA specifies in the Cooperative Agreement and/or Superfund State Contract for completion of all project work. It may be composed of more than one budget period.

Quality Assurance Project Plan. A written document, associated with remedial site sampling, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance and quality control activities and procedures designed to achieve the data quality objectives of a specific project(s) or continuing operation(s).

Real property. Land, including land improvements, structures, and appurtenances thereto, excluding movable machinery and equipment.

Recipient. Any State, political subdivision thereof, or Indian Tribe which has been awarded and has accepted an EPA Cooperative Agreement.

Services. A recipient's in-kind or a contractor's labor, time, or efforts which do not involve the delivery of a specific end item, other than documents (e.g., reports, design drawings, specifications). This term does not include employment agreements or collective bargaining agreements.

Simplified acquisition threshold. The dollar amount specified in the Office of Federal Procurement Policy Act, 41 U.S.C. 403. The threshold is currently set at $100,000.

Small business. A business as defined in section 3 of the Small Business Act, as amended (15 U.S.C. 632).

State. The several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of Northern Marianas, and any territory or possession over which the United States has jurisdiction.

Statement of Work (SOW). The portion of the Cooperative Agreement application and/or Superfund State Contract that describes the purpose and scope of activities and tasks to be carried out as a part of the proposed project.

Subcontractor. Any first tier party that has a contract with the recipient's prime contractor.

Superfund State Contract (SSC). A joint, legally binding agreement between EPA and another party(ies) to obtain the necessary assurances before an EPA-lead remedial action or any political subdivision-lead activities can begin at a site, and to ensure State or Indian Tribe involvement as required under CERCLA section 121(f).

Supplies. All tangible personal property other than equipment as defined in this section.

Support agency. The agency that furnishes necessary data to the lead agency, reviews response data and documents, and provides other assistance to the lead agency.

Task. An element of a Superfund response activity identified in the Statement of Work of a Superfund Cooperative Agreement or a Superfund State Contract.

Title. The valid claim to property that denotes ownership and the rights of ownership, including the rights of possession, control, and disposal of property.

Unit acquisition cost. The net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

Value engineering. A systematic and creative analysis of each contract term or task to ensure that its essential function is provided at the overall lowest cost.

Women's Business Enterprise (WBE). A business which is certified as a Women's Business Enterprise by a State or Federal agency, or which meets the following definition. A Women's Business Enterprise is an independent business concern which is at least 51 percent owned by a woman or women who also control and operate it. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws.

(b) Those terms not defined in this section shall have the meanings set forth in section 101 of CERCLA, 40 CFR part 31, and 40 CFR part 300 (the National Contingency Plan).

§ 35.6020 Requirements for both applicants and recipients.

Applicants and recipients must comply with the applicable requirements of 40 CFR part 32, ''Governmentwide Debarment and Suspension (Non-procurement); and Statutory Disqualification under the Clean Air Act and Clean Water Act,'' and of 40 CFR part 36, ''Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).''

§ 35.6025 Deviation from this subpart.

On a case-by-case basis, EPA will consider requests for an official deviation from the non-statutory provisions of this subpart. Refer to the requirements regarding additions and exceptions described in 40 CFR 31.6 (b), (c), and (d).

Pre-Remedial Response Cooperative Agreements

§ 35.6050 Eligibility for pre-remedial Cooperative Agreements.

States, political subdivisions, and Indian Tribes may apply for pre-remedial response Cooperative Agreements.

§ 35.6055 State-lead pre-remedial Cooperative Agreements.

(a) To receive a State-lead pre-remedial Cooperative Agreement, the applicant must submit an ''Application for Federal Assistance'' (SF–424) for non-construction programs. Applications for additional funding need include only the revised pages. The application must include the following:

(1) *Budget sheets* (SF–424A).

(2) *A Project narrative statement,* including the following:

(i) *A list of sites* at which the applicant proposes to undertake pre-remedial tasks. If the recipient proposes to revise the list, the recipient may not incur costs on a new site until the EPA project officer has approved the site;

(ii) *A Statement of Work (SOW)* which must include a detailed description, by task, of activities to be conducted, the projected costs associated with each task, the number of products to be completed, and a quarterly schedule indicating when these products will be submitted to EPA; and

(iii) *A schedule of deliverables.*

(3) *Other applicable forms and information* authorized by 40 CFR 31.10.

(b) *Pre-remedial Cooperative Agreement requirements.* The recipient must comply with all terms and conditions in the Cooperative Agreement, and with the following requirements:

(1) *Health and safety plan.* (i) Before beginning field work, the recipient must have a health and safety plan in place providing for the protection of on-site personnel and area residents. This plan need not be submitted to EPA, but must be made available to EPA upon request.

(ii) The recipient's health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled ''Hazardous Waste Operations and Emergency Response,'' unless the recipient is an Indian Tribe exempt from OSHA requirements.

(2) *Quality assurance.* (i) The recipient must comply with the quality assurance requirements described in 40 CFR 31.45.

(ii) The recipient must have an EPA-approved non-site-specific quality assurance plan in place before beginning field work. The recipient must submit the plan to EPA in adequate time (generally 45 days) for approval to be granted before beginning field work.

(iii) The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

§ 35.6060 Political subdivision-lead pre-remedial Cooperative Agreements.

(a) If the Award Official determines that a political subdivision's lead involvement in pre-remedial activities would be more efficient, economical and appropriate than that of a State,

based on the number of sites to be addressed and the political subdivision's history of program involvement, a pre-remedial Cooperative Agreement may be awarded under this section.

(b) The political subdivision must comply with all of the requirements described in § 35.6055.

§ 35.6070 Indian Tribe-lead pre-remedial Cooperative Agreements.

The Indian Tribe must comply with all of the requirements described in § 35.6055, except for the intergovernmental review requirements included in the ''Application for Federal Assistance'' (SF–424).

Remedial Response Cooperative Agreements

§ 35.6100 Eligibility for remedial Cooperative Agreements.

States, Indian Tribes, and political subdivisions may apply for remedial response Cooperative Agreements.

§ 35.6105 State-lead remedial Cooperative Agreements.

To receive a State-lead remedial Cooperative Agreement, the applicant must submit the following items to EPA:

(a) *Application form,* as described in § 35.6055(a). Applications for additional funding need to include only the revised pages. The application must include the following:

(1) *Budget sheets* (SF–424A) displaying costs by site, activity and operable unit, as applicable.

(2) *A Project narrative statement,* including the following:

(i) *A site description,* including a discussion of the location of each site, the physical characteristics of each site (site geology and proximity to drinking water supplies), the nature of the release (contaminant type and affected media), past response actions at each site, and response actions still required at each site;

(ii) *A site-specific Statement of Work (SOW),* including estimated costs per task, and a standard task to ensure that a sign is posted at the site providing the appropriate contacts for obtaining information on activities being conducted at the site, and for reporting suspected criminal activities;

(iii) *A statement designating a lead site project manager among appropriate State offices.* This statement must demonstrate that the lead State agency has conducted coordinated planning of response activities with other State agencies. The statement must identify the name and position of those individuals who will be responsible for coordinating the State offices;

(iv) *A site-specific Community Relations Plan* or an assurance that field work will not begin until one is in place. The Regional community relations coordinator must approve the Community Relations Plan before the recipient begins field work. The recipient must comply with the community relations requirements described in EPA policy and guidance, and in the National Contingency Plan;

(v) *A site-specific health and safety plan,* or an assurance that the applicant will have a final plan before starting field work. Unless specifically waived by the award official, the applicant must have a site-specific health and safety plan in place providing for the protection of on-site personnel and area residents. The site-specific health and safety plan must comply with Occupational Safety and Health Administration (OSHA) 29 CFR 1910.120, entitled, ''Hazardous Waste Operations and Emergency Response,'' unless the recipient is an Indian Tribe exempt from OSHA requirements;

(vi) *Quality assurance—(A) General.* If the project involves environmentally related measurements or data generation, the recipient must comply with the requirements regarding quality assurance described in 40 CFR 31.45.

(B) *Quality assurance plan.* The applicant must have a separate quality assurance project plan and/or sampling plan for each site to be covered by the Cooperative Agreement. The applicant must submit the quality assurance project plan and the sampling plan, which incorporates results of any site investigation performed at that site, to EPA with its Cooperative Agreement application. However, at the option of the EPA award official with program concurrence, the applicant may submit with its application a schedule for developing the detailed site-specific quality assurance plan (generally 45 days before beginning field work). Field work may not begin until EPA approves the site-specific quality assurance plan.

(C) *Split sampling.* The quality assurance plan must comply with the requirements regarding split sampling described in section 104(e)(4)(B) of CERCLA, as amended.

(vii) *A schedule of deliverables* to be prepared during response activities.

(3) *Other applicable forms and information* authorized by 40 CFR 31.10.

(b) *CERCLA Assurances.* Before a Cooperative Agreement for remedial action can be awarded, the State must provide EPA with the following written assurances:

(1) *Operation and maintenance.* The State must provide an assurance that it will assume responsibility for all future operation and maintenance of CERCLA-funded remedial actions for the expected life of each such action as required by CERCLA section 104(c) and addressed in 40 CFR 300.510(c)(1) of the NCP. In addition, even if a political subdivision is designated as being responsible for operation and maintenance, the State must guarantee that it will assume any or all operation and maintenance activities in the event of default by the political subdivision.

(2) *Cost sharing.* The State must provide assurances for cost sharing as follows:

(i) *Ten percent.* Where a facility, whether privately or publicly owned, was not operated by the State or political subdivision thereof, either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances at the facility, the State must provide 10 percent of the cost of the remedial action, if CERCLA-funded.

(ii) *Fifty percent or more.* Where a facility was operated by a State or political subdivision either directly or through a contractual relationship or otherwise, at the time of any disposal of hazardous substances at the facility, the State must provide 50 percent (or such greater share as EPA may determine appropriate, taking into account the degree of responsibility of the State or political subdivision for the release) of the cost of removal, remedial planning, and remedial action if the remedial action is CERCLA-funded.

(3) *Twenty-year waste capacity.* The State must assure EPA of the availability of hazardous waste treatment or disposal facilities within and/or outside the State that comply with subtitle C of the Solid Waste Disposal Act and that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are reasonably expected to be generated within the State during the 20-year period following the date of the response agreement. A remedial action cannot be funded unless this assurance is provided consistent with 40 CFR 300.510 of the NCP. EPA will determine whether the State's assurance is adequate.

(4) *Off-site storage, treatment, or disposal.* If off-site storage, destruction, treatment, or disposal is required, the State must assure the availability of a hazardous waste disposal facility that is in compliance with subtitle C of the Solid Waste Disposal Act and is acceptable to EPA. The lead agency of the State must provide the notification required at § 35.6120, if applicable.

(5) *Real property acquisition.* If EPA determines in the remedy selection process that an interest in real property must be acquired in order to conduct a response action, such acquisition may be funded under a Cooperative Agreement. EPA may acquire an interest in real estate for the purpose of conducting a remedial action only if the State provides assurance that it will accept transfer of such interest in accordance with 40 CFR 300.510(f) of the NCP. The State must provide this assurance even if it intends to transfer this interest to a third party, or to allow a political subdivision to accept transfer on behalf of the State. If the political subdivision is accepting the transferred interest in real property, the State must guarantee that it will accept transfer of such interest in the event of default by the political subdivision. If the State or political subdivision disposes of the transferred real property, it shall comply with the requirements for real property in 40 CFR 31.31(c)(2). (*See* § 35.6400 for additional information on real property acquisition requirements.)

§ 35.6110 Indian Tribe-lead remedial Cooperative Agreements.

(a) *Application requirements.* The Indian Tribe must comply with all of the requirements described in § 35.6105(a). Indian Tribes are not required to comply with the intergovernmental review requirements included in the ''Application for Federal Assistance'' (SF–424). Consistent with the NCP (40 CFR 300.510(e)(2)), this subpart does not address whether Indian Tribes are States for the purpose of CERCLA section 104(c)(9).

(b) *Cooperative Agreement requirements.* (1) The Indian Tribe must comply with all terms and conditions in the Cooperative Agreement.

(2) If it is designated the lead for remedial action, the Indian Tribe must provide the notification required at § 35.6120, substituting the term ''Indian Tribe'' for the term ''State'' in that section, and ''out-of-an-Indian-Tribal-area-of-Indian-country'' for ''out-of-State''.

(3) Indian Tribes are not required to share in the cost of CERCLA-funded remedial actions.

§ 35.6115 Political subdivision-lead remedial Cooperative Agreements.

(a) *General.* If the State concurs, EPA may allow a political subdivision with the necessary capabilities and jurisdictional authority to conduct remedial response activities at a site. EPA will award the political subdivision a Cooperative Agreement to conduct remedial response and enter into a parallel Superfund State Contract with the State, if required (*See* § 35.6800, when a Superfund State Contract is required). The political subdivision may also be a signatory to the Superfund State Contract. The political subdivision must submit to the State a copy of all reports provided to EPA.

(b) *Political subdivision Cooperative Agreement requirements*—(1) *Application requirements.* To receive a remedial Cooperative Agreement, the political subdivision must prepare an application which includes the documentation described in § 35.6105(a)(1) through (a)(3).

(2) *Cooperative Agreement requirements.* The political subdivision must comply with all terms and conditions in the Cooperative Agreement. If it is designated the lead for remedial action, the political subdivision must provide the notification required at § 35.6120, substituting the term ''political subdivision'' for the term ''State'' in that section.

§ 35.6120 Notification of the out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country transfer of CERCLA waste.

(a) The recipient must provide written notification of off-site shipments of CERCLA waste from a site to an out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country waste management facility to:

(1) The appropriate State environmental official for the State in which the waste management facility is located; and/or

(2) An appropriate official of an Indian Tribe in whose area of Indian country the waste management facility is located; and

(3) The EPA Award Official.

(b) The notification of off-site shipments does not apply when the total volume of all such shipments from the site does not exceed 10 cubic yards.

(c) The notification must be in writing and must provide the following information, where available:

(1) The name and location of the facility to which the CERCLA waste is to be shipped;

(2) The type and quantity of CERCLA waste to be shipped;

(3) The expected schedule for the shipments of the CERCLA waste; and

(4) The method of transportation of the CERCLA waste.

(d) The recipient must notify the State or Indian Tribal government in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the CERCLA waste to another facility within the same receiving State, or to a facility in another State.

(e) The recipient must provide relevant information on the off-site shipments, including the information in paragraph (c) of this section, as soon as possible after the award of the contract and, where practicable, before the CERCLA waste is actually shipped.

Enforcement Cooperative Agreements

§ 35.6145 Eligibility for enforcement Cooperative Agreements.

Pursuant to CERCLA section 104(d), States, political subdivisions thereof, and Indian Tribes may apply for enforcement Cooperative Agreements. To be eligible for an enforcement Cooperative Agreement, the State, political subdivision or Indian Tribe must demonstrate that it has the authority, jurisdiction, and the necessary administrative capabilities to take an enforcement action(s) to compel PRP cleanup of the site, or recovery of the cleanup costs. To accomplish this, the State, political subdivision or Indian Tribe, respectively, must submit the following for EPA approval:

(a) A letter from the State Attorney General, or comparable local official (of a political subdivision) or comparable Indian Tribal official, certifying that it has the authority, jurisdiction, and administrative capabilities that provide a basis for pursuing enforcement actions against a PRP to secure the necessary response;

(b) A copy of the applicable State, local (political subdivision) or Indian Tribal statute(s) and a description of how it is implemented;

(c) Any other documentation required by EPA to demonstrate that the State, local (political subdivision) or Indian Tribal government has the statutory authority, jurisdiction, and administrative capabilities to perform the enforcement activity(ies) to be funded under the Cooperative Agreement.

§ 35.6150 Activities eligible for funding under enforcement Cooperative Agreements.

An enforcement Cooperative Agreement application from a State, political subdivision or Indian Tribe may request funding for the following enforcement activities:

(a) PRP searches;

(b) Issuance of notice letters and negotiation activities;

(c) Administrative and judicial enforcement actions taken under State or Indian Tribal law;

(d) Management assistance and oversight of PRPs during Federal enforcement response;

(e) Oversight of PRPs during a State, political subdivision or Indian Tribe enforcement response contingent on the applicant having taken all necessary action to compel PRPs to fund the oversight of cleanup activities negotiated under the recipient's enforcement authorities. If the State, political subdivision, Indian Tribe or EPA cannot obtain PRP commitment to fund such oversight activities, then these activities will be considered eligible for CERCLA funding under an enforcement Cooperative Agreement.

§ 35.6155 State, political subdivision or Indian Tribe-lead enforcement Cooperative Agreements.

(a) The State, political subdivision or Indian Tribe must comply with the requirements described in § 35.6105 (a)(1) through (a)(3), as appropriate.

(b) The CERCLA section 104 assurances described in § 35.6105(b) are not applicable for enforcement Cooperative Agreements.

(c) Before an enforcement Cooperative Agreement is awarded, the State, political subdivision or Indian Tribe must:

(1) Assure EPA that it will notify and consult with EPA promptly if the recipient determines that its laws or other restrictions prevent the recipient from acting consistently with CERCLA; and

(2) If the applicant is seeking funds for oversight of PRP cleanup, the applicant must:

(i) Demonstrate that the proposed Statement of Work or cleanup plan prepared by the PRP satisfies the recipient's enforcement goals for those instances in which the recipient is seeking funding for oversight of PRP cleanup activities negotiated under the recipient's own enforcement authorities; and

(ii) Demonstrate that the PRP has the capability to attain the goals set forth in the plan;

(iii) Demonstrate that it has taken all necessary action to compel PRPs to fund the oversight of cleanup activities negotiated under the recipient's enforcement authorities.

Removal Response Cooperative Agreements

§ 35.6200 Eligibility for removal Cooperative Agreements.

When a planning period of more than six months is available, States, political subdivisions and Indian Tribes may apply for removal Cooperative Agreements.

§ 35.6205 Removal Cooperative Agreements.

(a) The State must comply with the requirements described in § 35.6105(a). To the extent practicable, the State must comply with the notification requirement at § 35.6120 when a removal action is necessary and involves out-of-State shipment of CERCLA wastes, and when, based on the site evaluation, EPA determines that a planning period of more than six months is available before the removal activities must begin.

(b) Pursuant to CERCLA section 104(c)(3), the State is not required to share in the cost of a CERCLA-funded removal action, unless the removal is conducted at a site that was publicly operated by a State or political subdivision at the time of disposal of hazardous substances and a CERCLA-funded remedial action is ultimately undertaken at the site. In this situation, the State must share at least 50 percent in the cost of all removal, remedial planning, and remedial action costs at the time of the remedial action as stated in § 35.6105(b)(2)(ii).

(c) If both the State and EPA agree, a political subdivision with the necessary capabilities and jurisdictional authority may assume the lead responsibility for all, or a portion, of the removal activity at a site. Political subdivisions must comply with the requirements described in § 35.6105(a). To the extent practicable, political subdivisions also must comply with the notification requirement at § 35.6120 when a removal action is necessary and involves the shipment of CERCLA wastes out of the State's jurisdiction, and when, based on the site evaluation, EPA determines that a planning period of more than six months is available before the removal activities must begin.

(d) The State must provide the cost share assurance discussed in paragraph (b) of this section on behalf of a political subdivision that is given the lead for a removal action.

(e) Indian Tribes must comply with the requirements described in § 35.6105(a). To the extent practicable, Indian Tribes also must comply with the notification requirement at § 35.6120 when a removal action is necessary and involves the shipment of CERCLA wastes out of the Indian Tribe's area of Indian country, and when, based on the site evaluation, EPA determines that a planning period of more than six months is available before the removal activities must begin.

(f) Indian Tribes are not required to share in the cost of a CERCLA-funded removal action.

Core Program Cooperative Agreements

§ 35.6215 Eligibility for Core Program Cooperative Agreements.

(a) States and Indian Tribes may apply for Core Program Cooperative Agreements in order to conduct CERCLA implementation activities that are not directly assignable to specific sites, but are intended to develop and maintain a State's or Indian Tribe's ability to participate in the CERCLA response program.

(b) Only the State or Indian Tribal government agency designated as the single point of contact with EPA for CERCLA implementation is eligible to receive a Core Program Cooperative Agreement.

(c) When it is more economical for a government entity other than the recipient (such as a political subdivision or State Attorney General) to implement tasks funded through a Core Program Cooperative Agreement, benefits to such entities must be provided for in an intergovernmental agreement.

§ 35.6220 General.

The recipient of a Core Program Cooperative Agreement must comply with the requirements regarding financial administration (§ § 35.6270 through 35.6290), property (§ § 35.6300 through 35.6450), procurement (§ § 35.6550 through 35.6610), reporting (§ § 35.6650 through 35.6670), records (§ § 35.6700 through 35.6710), and other administrative requirements under a Cooperative Agreement (§ § 35.6750 through 35.6790). Recipients may not incur site-specific costs. Where these sections entail site-specific requirements, the recipient is not required to comply on a site-specific basis.

§ 35.6225 Activities eligible for funding under Core Program Cooperative Agreements.

(a) To be eligible for funding under a Core Program Cooperative Agreement, activities must develop and maintain a recipient's abilities to implement CERCLA. Once the recipient has in place program functions described in paragraphs (a)(1) through (a)(4) of this section, EPA will evaluate the recipient's program needs to sustain interaction with EPA in CERCLA implementation as described in paragraph (a)(5) of this section. The amount of funding provided under the Core Program will be determined by EPA based on the availability of funds and the recipient's program needs in the areas described in paragraphs (a)(1) through (a)(4) of this section:

(1) Procedures for emergency response actions and longer-term

remediation of environmental and health risks at hazardous waste sites (including but not limited to the development of generic health and safety plans, quality assurance project plans, and community relation plans);

(2) Provisions for satisfying all requirements and assurances (including the development of a fund or other financing mechanism(s) to pay for studies and remediation activities);

(3) Legal authorities and enforcement support associated with proper administration of the recipient's program and with efforts to compel potentially responsible parties to conduct or pay for studies and/or remediation (including but not limited to the development of statutory authorities; access to legal assistance in identifying applicable or relevant and appropriate requirements of other laws; and development and maintenance of the administrative, financial and recordkeeping systems necessary for cost recovery actions under CERCLA);

(4) Efforts necessary to hire and train staff to manage publicly-funded cleanups, oversee responsible party-lead cleanups, and provide clerical support; and

(5) Other activities deemed necessary by EPA to develop and maintain sustained EPA/recipient interaction in CERCLA implementation (including but not limited to general program management and supervision necessary for a recipient to implement CERCLA activities, and interagency coordination on all phases of CERCLA response).

(b) Continued funding of tasks in subsequent years will be based on an evaluation of demonstrated progress toward the goals in the existing Core Program Cooperative Agreement Statement of Work.

§ 35.6230 Application requirements.

To receive a Core Program Cooperative Agreement, the applicant must submit an application form (''Application for Federal Assistance,'' SF–424, for non-construction programs) to EPA. Applications for additional funding need include only the revised pages. The application must include the following:

(a) *A project narrative statement,* including the following:

(1) *A Statement of Work (SOW)* which must include a detailed description of the CERCLA-funded activities and tasks to be conducted, the projected costs associated with each task, the number of products to be completed, and a schedule for implementation. Eligible activities under Core Program Cooperative Agreements are discussed in § 35.6225; and

(2) *A background statement,* describing the current abilities and authorities of the recipient's program for implementing CERCLA, the program's needs to sustain and increase recipient involvement in CERCLA implementation, and the impact of Core Program Cooperative Agreement funds on the recipient's involvement in site-specific CERCLA response.

(b) *Budget sheets* (SF–424A).

(c) *Proposed project and budget periods* for CERCLA-funded activities. The project and budget periods may be one or more years and may be extended incrementally, up to 12 months at a time, with EPA approval.

(d) *Other applicable forms and information* authorized by 40 CFR 31.10.

§ 35.6235 Cost sharing.

A State must provide at least ten percent of the direct and indirect costs of all activities covered by the Core Program Cooperative Agreement. Indian Tribes are not required to share in the cost of Core Program activities. The State must provide its cost share with non-Federal funds or with Federal funds, authorized by statute to be used for matching purposes. Funds used for matching purposes under any other Federal grant or Cooperative Agreement cannot be used for matching purposes under a Core Program Cooperative Agreement. The State may provide its share using in-kind contributions if such contributions are provided for in the Cooperative Agreement. The State may not use CERCLA State credits to offset any part of its required match for Core Program Cooperative Agreements. (*See* § 35.6285 (c), (d), and (f) regarding credit, excess cash cost share contributions/over match, and advance match, respectively.)

Support Agency Cooperative Agreements

§ 35.6240 Eligibility for support agency Cooperative Agreements.

States, political subdivisions, and Indian Tribes may apply for support agency Cooperative Agreements to ensure their meaningful and substantial involvement in response activities, as specified in sections 104 and 121(f)(1) of CERCLA and the NCP (40 CFR part 300).

§ 35.6245 Allowable activities.

Support agency activities are those activities conducted by the recipient to ensure its meaningful and substantial involvement. The activities described in section 121(f)(1) of CERCLA, as amended, and in subpart F of the NCP (40 CFR part 300), are eligible for funding under a support agency Cooperative Agreement. Participation in five-year reviews of the continuing protectiveness of a remedial action is also an eligible support agency activity.

§ 35.6250 Support agency Cooperative Agreement requirements.

(a) *Application requirements.* The applicant must comply with the requirements described in § 35.6105(a)(1) and (3), and other requirements as negotiated with EPA. (Indian Tribes are exempt from the requirement of Intergovernmental Review in 40 CFR part 29.) An applicant may submit a non-site-specific budget for support agency activities.

(b) *Cooperative Agreement requirements.* The recipient must comply with the requirements regarding financial administration (§ § 35.6270 through 35.6290), property (§ § 35.6300 through 35.6450), procurement (§ § 35.6550 through 35.6610), reporting (§ § 35.6650 through 35.6670), records (§ § 35.6700 through 35.6710), and other administrative requirements under a Cooperative Agreement (§ § 35.6750 through 35.6790).

Combining Cooperative Agreements

§ 35.6260 Combining Cooperative Agreement sites and activities.

(a) EPA may award a Cooperative Agreement to a recipient for:

(1) A single activity, or multiple activities;

(2) A single activity at multiple sites; and

(3) Except as provided in paragraphs (b), (c), and (d) of this section, multiple activities at multiple sites.

(b) EPA will not award or amend a Cooperative Agreement to a political subdivision to conduct multiple activities at multiple sites. Before awarding or amending a Cooperative Agreement to permit multiple activities at multiple sites, EPA must determine that the State or Indian Tribe has adequate administrative, technical, and financial management and tracking capabilities. A State's or Indian Tribe's request for such a Cooperative Agreement will be considered only if EPA determines that consolidating these activities under one Cooperative Agreement would be in the Agency's best interests.

(c) EPA will not award a single Cooperative Agreement to conduct multiple remedial actions at multiple sites.

(d) EPA will require separate Cooperative Agreements for eligible removal actions that exceed the statutory monetary ceiling or whenever a consistency waiver is likely to be sought.

Financial Administration Requirements Under a Cooperative Agreement

§ 35.6270 Standards for financial management systems.

(a) *Accounting system standards*—(1) *General.* The recipient's system must track expenses by site, activity, and, operable unit, as applicable, according to object class. The system must also provide control, accountability, and an assurance that funds, property, and other assets are used only for their authorized purposes. The recipient must allow an EPA review of the adequacy of the financial management system as described in 40 CFR 31.20(c).

(2) *Allowable costs.* The recipient's systems must comply with the appropriate allowable cost principles described in 40 CFR 31.22.

(3) *Pre-remedial.* The system need not track expenses by site. However, all pre-remedial costs must be documented under a single Superfund account number designated specifically for the pre-remedial activity.

(4) *Core Program.* Since all costs associated with Core Program Cooperative Agreements are non-site-specific, the systems need not track expenses by site. However, all Core Program costs must be documented under the Superfund account number(s) designated specifically for Core Program activity.

(5) *Support Agency.* All support agency agreements will be assigned a single Superfund activity code designated specifically for support agency activities. All support agency costs, however, must be documented site specifically in accordance with the terms and conditions specified in the Cooperative Agreement.

(6) *Accounting system control procedures.* Except as provided for in paragraph (a)(3) of this section, accounting system control procedures must ensure that accounting information is:

(i) Accurate, charging only costs attributable to the site, activity, and operable unit, as applicable; and

(ii) Complete, recording and charging to individual sites, activities, and operable units, as applicable, all costs attributable to the recipient's CERCLA effort.

(7) *Financial reporting.* The recipient's accounting system must use actual costs as the basis for all reports of direct site charges. The recipient must comply with the requirements for financial reporting contained in § 35.6670.

(b) *Recordkeeping system standards.* (1) The recipient must maintain a recordkeeping system that enables site-specific costs to be tracked by site, activity, and operable unit, as applicable, and provides sufficient documentation for cost recovery purposes.

(2) The recipient must provide this site-specific documentation to the EPA Regional Office within 30 working days of a request, unless another time frame is specified in the Cooperative Agreement.

(3) In addition, the recipient must comply with the requirements regarding records described in § § 35.6700, 35.6705, and 35.6710. The recipient must comply with the requirements regarding source documentation described in 40 CFR 31.20(b)(6).

(4) For pre-remedial and Core Program activities, the recordkeeping system must comply with the requirements described in paragraphs (a)(3) and (a)(4) of this section.

§ 35.6275 Period of availability of funds.

(a) The recipient must comply with the requirements regarding the availability of funds described in 40 CFR 31.23.

(b) Except as permitted in § 35.6285, the Award Official must sign the assistance agreement before costs are incurred. The recipient may incur costs between the date the Award Official signs the assistance agreement and the date the recipient signs the agreement, if the costs are identified in the agreement and the recipient does not change the agreement.

§ 35.6280 Payments.

(a) *General.* In addition to the following requirements, the recipient must comply with the requirements regarding payment described in 40 CFR 31.21 (f) through (h).

(1) *Assignment of payment.* The recipient cannot assign the right to receive payments under the recipient's Cooperative Agreement. EPA will make payments only to the payee identified in the Cooperative Agreement.

(2) *Interest.* The interest a recipient earns on an advance of EPA funds is subject to the requirements of 40 CFR 31.21(i), ''Interest earned on advances.''

(b) *Payment method*—(1) *Letter of credit.* In order to receive payment by the letter of credit method, the recipient must comply with the requirements regarding letter of credit described in 40 CFR 31.20 (b)(7) and 31.21(b). The recipient must identify and charge costs to specific sites, activities, and operable units, as applicable, for drawdown purposes as specified in the Cooperative Agreement.

(2) *Reimbursement.* If the recipient is unable to meet letter of credit requirements, EPA will pay the recipient by reimbursement. The recipient must comply with the requirements regarding reimbursement described in 40 CFR 31.21(d).

(3) *Working capital advances.* If the recipient is unable to meet the criteria for payment by either letter of credit or reimbursement, EPA may provide cash on a working capital advance basis. Under this procedure EPA shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the recipient's disbursing cycle. Thereafter, EPA shall reimburse the recipient for its actual cash disbursements. In such cases, the recipient must comply with the requirements regarding working capital advances described in 40 CFR 31.21(e).

§ 35.6285 Recipient payment of response costs.

The recipient may pay for its share of response costs using cash, services, credits or any combination of these, as follows:

(a) *Cash.* The recipient may pay for its share of response costs in the form of cash.

(b) *Services.* The recipient may provide equipment and services to satisfy its cost share requirements under Cooperative Agreements. The recipient must comply with the requirements regarding in-kind and donated services described in 40 CFR 31.24.

(c) *Credit*—(1) *General credit requirements.* Credits are limited to State site-specific expenses that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-Federal funds for remedial action, as defined in CERCLA section 101(24), that are consistent with a permanent remedy at the site. Credits are established on a site-specific basis. Only a State may claim credit.

(i) The State may claim credit for response activity obligations or expenditures incurred by the State or political subdivision between January 1, 1978, and December 11, 1980.

(ii) The State may claim credit for remedial action expenditures made by the State after October 17, 1986. If such expenditures occurred after the site was listed on the NPL (Appendix B to 40 CFR Part 300), they will be eligible for a credit only if the State initiated the remedial action after obtaining EPA's written approval.

(iii) The State may not claim credit for removal actions taken after December 11, 1980.

(2) *Credit submission requirements.* Although EPA may require additional documentation, the State must submit

the following before EPA will approve the use of the credit:

(i) Specific amounts claimed for credit, by site (estimated amounts are unacceptable), based on supporting cost documentation;

(ii) Units of government (State agency, county, local) that incurred the costs, by site;

(iii) Description of the specific function performed by each unit of government at each site;

(iv) Certification (signed by the State's fiscal manager or the financial director for each unit of government) that credit costs have not been previously reimbursed by the Federal Government or any other party, and have not been used for matching purposes under any other Federal program or grant; and

(v) Documentation, if requested by EPA, to ensure the actions undertaken at the site are cost eligible and consistent with CERCLA, as amended, and the NCP requirements in 40 CFR part 300. This requirement does not apply for costs incurred before December 11, 1980.

(3) *Use of credit.* The State must first apply credit at the site at which it was earned. With the approval of EPA, the State may use excess credit earned at one site for its cost share at another site (*See* CERCLA section 104(c)(5)). Credits must be applied on a site-specific basis, and, therefore, may not be used to meet State cost share requirements for Core Program Cooperative Agreements. EPA will not reimburse excess credit.

(4) *Credit verification procedures.* Expenditure submissions are subject to verification by audit or other financial review. EPA may conduct a technical review (including inspection) to verify that the claimed remedial action is consistent with CERCLA and the NCP (40 CFR part 300).

(d) *Excess cash cost share contributions/overmatch.* The recipient may direct EPA to return the excess funds or to use the overmatch at one site to meet the cost share obligation at another site. The recipient may not use contributions in excess of the required cost share at one site to meet the cost share obligation for the Core Program cost share. Overmatch is not ''credit'' pursuant to paragraph (c)(3) of this section.

(e) *Cost sharing.* The recipient must comply with the requirements regarding cost sharing described in 40 CFR 31.24. Finally, the recipient cannot use costs incurred under the Core Program to offset cost share requirements at a site.

(f) *Advance match.* (1) A Cooperative Agreement for a site-specific response entered into after October 17, 1986, cannot authorize a State to contribute funds during remedial planning and then apply those contributions to the remedial action cost share (advance match).

(2) A State may seek reimbursement for costs incurred under Cooperative Agreements which authorize advance match.

(3) Reimbursements are subject to the availability of appropriated funds.

(4) If the State does not seek reimbursement, EPA will apply the advance match to off-set the State's required cost share for remedial action at the site. The State may not use advance match for credit at any other site, nor may the State receive reimbursement until the conclusion of CERCLA-funded remedial response activities. Also, the State may not use advance match for credit against cost share obligations for Core Program Cooperative Agreements.

(5) Claims for advance match are subject to verification by audit.

§ 35.6290 Program income.

The recipient must comply with the requirements regarding program income described in 40 CFR 31.25. Recoveries of Federal cost share amounts are not program income, and whether such recoveries are received before or after expiration of the Cooperative Agreement, must be reimbursed promptly to EPA.

Personal Property Requirements Under a Cooperative Agreement

§ 35.6300 General personal property acquisition and use requirements.

(a) *General.* (1) Property may be acquired only when authorized in the Cooperative Agreement.

(2) The recipient must acquire the property during the approved project period.

(3) The recipient must:

(i) Charge property costs by site, activity, and operable unit, as applicable;

(ii) Document the use of the property by site, activity, and operable unit, as applicable; and

(iii) Solicit and follow EPA's instructions on the disposal of any property purchased with CERCLA funds as specified in § § 35.6340 and 35.6345.

(b) *Exception.* The recipient is not required to charge property costs by site under a pre-remedial or Core Program Cooperative Agreement.

§ 35.6305 Obtaining supplies.

To obtain supplies, the recipient must agree to comply with the requirements in § § 35.6300, 35.6315(b), 35.6325 through 35.6340, and 35.6350. Supplies obtained with Core Program funds must be for non-site-specific purposes. All purchases of supplies under the Core Program must comply with the requirements in § § 35.6300, 35.6315(b), 35.6325 through 35.6340, and 35.6350, except where these requirements are site-specific.

§ 35.6310 Obtaining equipment.

To obtain equipment, the recipient must agree to comply with the requirements in § § 35.6300 and 35.6315 through 35.6350.

§ 35.6315 Alternative methods for obtaining property.

(a) *Purchase equipment with recipient funds.* The recipient may purchase equipment with the recipient's own funds and may charge EPA a fee for using equipment on a CERCLA-funded project. The fee must be based on a usage rate, subject to the usage rate requirements in § 35.6320.

(b) *Borrow federally owned property.* The recipient may borrow federally owned property, with the exception of motor vehicles, for use on CERCLA-funded projects. The loan of the federally owned property may only extend through the project period. At the end of the project period, or when the federally owned property is no longer needed for the project, the recipient must return the property to the Federal Government.

(c) *Lease, use contractor services, or purchase with CERCLA funds.* To acquire equipment through lease, use of contractor services, or purchase with CERCLA funds, the recipient must conduct and document a cost comparison analysis to determine which of these methods of obtaining equipment is the most cost effective. In order to obtain the equipment, the recipient must submit documentation of the cost comparison analysis to EPA for approval. The recipient must obtain the equipment through the most cost-effective method, subject to the following requirements:

(1) *Lease or rent equipment.* If it is the most cost-effective method of acquisition, the recipient may lease or rent equipment, subject only to the requirements in § 35.6300.

(2) *Use contractor services.* (i) If it is the most cost-effective method of acquisition, the recipient may hire the services of a contractor.

(ii) The recipient must obtain award official approval before authorizing the contractor to purchase equipment with CERCLA funds. (*See* § 35.6325, regarding the title and vested interest of equipment purchased with CERCLA funds.) This does not apply for

recipients who have used the sealed bids method of procurement.

(iii) The recipient must require the contractor to allocate the cost of the contractor services by site, activity, and operable unit, as applicable.

(3) *Purchase equipment with CERCLA funds.* If equipment purchase is the most cost-effective method of obtaining the equipment, the recipient may purchase the equipment with CERCLA funds. To purchase equipment with CERCLA funds, the recipient must comply with the following requirements:

(i) The recipient must include in the Cooperative Agreement application a list of all items of equipment to be purchased with CERCLA funds, with the price of each item.

(ii) If the equipment is to be used on sites, the recipient must allocate the cost of the equipment by site, activity, and operable unit, as applicable, by applying a usage rate subject to the usage rate requirements in § 35.6320.

(iii) The recipient may not use CERCLA funds to purchase a transportable or mobile treatment system.

(iv) Equipment obtained with Core Program funds must be for non-site-specific purposes. All purchases of equipment must comply with the requirements in §§ 35.6300, and 35.6310 through 35.6350, except where these requirements are site-specific.

§ 35.6320 Usage rate.

(a) *Usage rate approval.* To charge EPA a fee for use of equipment purchased with recipient funds or to allocate the cost of equipment by site, activity, and operable unit, as applicable, the recipient must apply a usage rate. The recipient must submit documentation of the usage rate computation to EPA. The EPA-approved usage rate must be included in the Cooperative Agreement before the recipient incurs these equipment costs.

(b) *Usage rate application.* The recipient must record the use of the equipment by site, activity, and operable unit, as applicable, and must apply the usage rate to calculate equipment charges by site, activity, and operable unit, as applicable. For Core Program and pre-remedial activities, the recipient is not required to apply a usage rate.

§ 35.6325 Title and EPA interest in CERCLA-funded property.

(a) *EPA's interest in CERCLA-funded property.* EPA has an interest (the percentage of EPA's participation in the total award) in both equipment and supplies purchased with CERCLA funds.

(b) *Title in CERCLA-funded property.* Title in both equipment and supplies purchased with CERCLA funds vests in the recipient.

(1) *Right to transfer title.* EPA retains the right to transfer title of all property purchased with CERCLA funds to the Federal Government or a third party within 120 calendar days after project completion or at the time of disposal.

(2) *Equipment used as all or part of the remedy.* The following requirements apply to equipment used as all or part of the remedy:

(i) *Fixed in-place equipment.* EPA no longer has an interest in fixed in-place equipment once the equipment is installed.

(ii) *Equipment that is an integral part of services to individuals.* EPA no longer has an interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, once EPA certifies that the remedy is operational and functional.

§ 35.6330 Title to federally owned property.

Title to all federally owned property vests in the Federal Government.

§ 35.6335 Property management standards.

The recipient must comply with the following property management standards for property purchased with CERCLA funds. The recipient may use its own property management system if it meets the following standards.

(a) *Control.* The recipient must maintain:

(1) *Property records* for CERCLA-funded property which include the contents specified in § 35.6700(c);

(2) *A control system* that ensures adequate safeguards for prevention of loss, damage, or theft of the property. The recipient must make provisions for the thorough investigation and documentation of any loss, damage, or theft;

(3) *Procedures* to ensure maintenance of the property are in good condition and periodic calibration of the instruments used for precision measurements;

(4) *Sales procedures* to ensure the highest possible return, if the recipient is authorized to sell the property;

(5) *Provisions for financial control and accounting* in the financial management system of all equipment; and

(6) *Identification* of all federally owned property.

(b) *Inventory and reporting for CERCLA-funded equipment*—(1) *Physical inventory.* The recipient must conduct a physical inventory at least once every two years for all equipment except that which is part of the in-place remedy. The recipient must reconcile physical inventory results with the equipment records.

(2) *Inventory reports.* The recipient must comply with requirements for inventory reports set forth in § 35.6660.

(c) *Inventory and reporting for federally owned property*—(1) *Physical inventory.* The recipient must conduct a physical inventory:

(i) Annually;

(ii) When the property is no longer needed; and

(iii) Within 90 days after the end of the project period.

(2) *Inventory reports.* The recipient must comply with requirements for inventory reports in § 35.6660.

§ 35.6340 Disposal of CERCLA-funded property.

(a) *Equipment.* For equipment that is no longer needed, or at the end of the project period, whichever is earlier, the recipient must:

(1) Analyze two alternatives: The cost of leaving the equipment in place, and the cost of removing the equipment and disposing of it in another manner.

(2) Document the analysis of the two alternatives in the inventory report. *See* § 35.6660 regarding requirements for the inventory report.

(i) If it is most cost-effective to remove the equipment and dispose of it in another manner:

(A) If the equipment has a residual fair market value of $5,000 or more, the recipient must request disposition instructions from EPA in the inventory report. See § 35.6345 for equipment disposal options.

(B) If the equipment has a residual fair market value of less than $5,000, the recipient may retain the equipment for the recipient's use on another CERCLA site. If, however, there is any remaining residual value at the time of final disposition, the recipient must reimburse the Hazardous Substance Superfund for EPA's vested interest in the current fair market value of the equipment at the time of disposition.

(ii) If it is most cost-effective to leave the equipment in place, recommend in the inventory report that the equipment be left in place.

(3) Submit the inventory report to EPA, even if EPA has stopped supporting the project.

(b) *Supplies.* (1) If supplies have an aggregate fair market value of $5,000 or more at the end of the project period, the recipient must take one of the following actions at the direction of EPA:

(i) Use the supplies on another CERCLA project and reimburse the original project for the fair market value of the supplies;

(ii) If both the recipient and EPA concur, keep the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies; or

(iii) Sell the supplies and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the supplies, less any reasonable selling expenses.

(2) If the supplies remaining at the end of the project period have an aggregate fair market value of less than $5,000, the recipient may keep the supplies to use on another CERCLA project. If the recipient cannot use the supplies on another CERCLA project, then the recipient may keep or sell the supplies without reimbursing the Hazardous Substance Superfund.

§ 35.6345 Equipment disposal options.

The following disposal options are available:

(a) Use the equipment on another CERCLA project and reimburse the original project for the fair market value of the equipment;

(b) If both the recipient and EPA concur, keep the equipment and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the equipment;

(c) Sell the equipment and reimburse the Hazardous Substance Superfund for EPA's interest in the current fair market value of the equipment, less any reasonable selling expenses; or

(d) Return the equipment to EPA and, if applicable, EPA will reimburse the recipient for the recipient's proportionate share in the current fair market value of the equipment.

§ 35.6350 Disposal of federally owned property.

When federally owned property is no longer needed, or at the end of the project, the recipient must inform EPA that the property is available for return to the Federal Government. EPA will send disposition instructions to the recipient.

Real Property Requirements Under a Cooperative Agreement

§ 35.6400 Acquisition and transfer of interest.

(a) An interest in real property may be acquired only with prior approval of EPA.

(1) If the recipient acquires real property in order to conduct the response, the recipient with jurisdiction over the property must agree to hold the necessary property interest.

(2) If it is necessary for the Federal Government to acquire the interest in real estate to permit conduct of a remedial action, the acquisition may be made only if the State provides assurance that it will accept transfer of the acquired interest in accordance with 40 CFR 300.510(f) of the NCP. States must follow the requirements in § 35.6105(b)(5).

(b) The recipient must comply with applicable Federal regulations for real property acquisition under assistance agreements contained in part 4 of this chapter, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs.''

§ 35.6405 Use.

The recipient must comply with the requirements regarding real property described in 40 CFR 31.31.

Copyright Requirements Under a Cooperative Agreement

§ 35.6450 General requirements.

The recipient must comply with the requirements regarding copyrights described in 40 CFR 31.34. The recipient must comply with the requirements regarding contract copyright provisions described in § 35.6595(b)(2).

Use of Recipient Employees (''Force Account'') Under a Cooperative Agreement

§ 35.6500 General requirements.

(a) Force Account work is the use of the recipient's own employees or equipment for construction, construction-related activities (including architecture and engineering services), or repair or improvement to a facility. When using Force Account work, the recipient must demonstrate that the employees can complete the work as competently as, and more economically than, contractors, or that an emergency necessitates the use of the Force Account.

(b) Where the value of Force Account services exceeds the simplified acquisition threshold, the recipient must receive written authorization for use from the award official.

Procurement Requirements Under a Cooperative Agreement

§ 35.6550 Procurement system standards.

(a) *Recipient standards.* (1) In addition to the basic procurement policies and procedures described in 40 CFR 31.36(a), the State shall comply with the requirements in the following: Paragraphs (a)(5), (a)(9), and (b) of this section, § § 35.6555(c), 35.6565 (the first sentence in this section, the first sentence in paragraph (b) of this section, and all of paragraph (d) of this section), 35.6570, 35.6575, and 35.6600. Political subdivisions and Tribes must follow all of the requirements included or referenced in this section through § 35.6610.

(2) *EPA review.* EPA reserves the right to review any recipient's procurement system or procurement action under a Cooperative Agreement.

(3) *Code of conduct.* The recipient must comply with the requirements of 40 CFR 31.36(b)(3), which describes standards of conduct for employees, officers, and agents of the recipient.

(4) *Completion of contractual and administrative issues.* (i) The recipient is responsible for the settlement and satisfactory completion in accordance with sound business judgment and good administrative practice of all contractual and administrative issues arising out of procurements under the Cooperative Agreement.

(ii) EPA will not substitute its judgment for that of the recipient unless the matter is primarily a Federal concern.

(iii) Violations of law will be referred to the local, State, Tribal, or Federal authority having proper jurisdiction.

(5) *Selection procedures.* The recipient must have written selection procedures for procurement transactions.

(i) EPA may not participate in a recipient's selection panel except to provide technical assistance. EPA staff providing such technical assistance:

(A) Shall constitute a minority of the selection panel (limited to making recommendations on qualified offers and acceptable proposals based on published evaluation criteria) for the contractor selection process; and

(B) Are not permitted to participate in the negotiation and award of contracts.

(ii) When selecting a contractor, recipients:

(A) May not use EPA contractors to provide any support related to procuring a State contractor.

(B) May use the Corps of Engineers for review of State bidding documents, requests for proposals and bids and proposals received.

(6) *Award.* The recipient may award a contract only to a responsible contractor, as described in 40 CFR 31.36(b)(8), and must ensure that each contractor performs in accordance with all the provisions of the contract. (*See* also § 35.6020.)

(7) *Protest procedures.* The recipient must comply with the requirements

described in 40 CFR 31.36(b)(12) regarding protest procedures.

(8) *Reporting.* The recipient must comply with the requirements for procurement reporting contained in § 35.6665.

(9) *Intergovernmental agreements.* (i) To foster greater economy and efficiency, recipients are encouraged to enter into intergovernmental agreements for procurement or use of common goods and services.

(ii) Although intergovernmental agreements are not subject to the requirements set forth in this section through § 35.6610, all procurements under intergovernmental agreements are subject to these requirements except for procurements that are:

(A) Incidental to the purpose of the assistance agreement; and

(B) Made through a central public procurement unit.

(10) *Value engineering.* The recipient is encouraged to include value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.

(b) *Contractor standards*—(1) *Disclosure requirements regarding Potentially Responsible Party relationships.* The recipient must require each prospective contractor to provide with its bid or proposal:

(i) Information on its financial and business relationship with all PRPs at the site and with the contractor's parent companies, subsidiaries, affiliates, subcontractors, or current clients at the site. Prospective contractors under a Core Program Cooperative Agreement must provide comparable information for all sites within the recipient's jurisdiction. (This disclosure requirement encompasses past financial and business relationships, including services related to any proposed or pending litigation, with such parties);

(ii) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; and

(iii) A statement that it shall disclose immediately any such information discovered after submission of its bid or proposal or after award. The recipient shall evaluate such information and if a member of the contract team has a conflict of interest which prevents the team from serving the best interests of the recipient, the prospective contractor may be declared nonresponsible and the contract awarded to the next eligible bidder or offeror.

(2) *Conflict of interest*—(i) *Conflict of interest notification.* The recipient must require the contractor to notify the recipient of any actual, apparent, or potential conflict of interest regarding any individual working on a contract assignment or having access to information regarding the contract. This notification shall include both organizational conflicts of interest and personal conflicts of interest. If a personal conflict of interest exists, the individual who is affected shall be disqualified from taking part in any way in the performance of the assigned work that created the conflict of interest situation.

(ii) *Contract provisions.* The recipient must incorporate the following provisions or their equivalents into all contracts, except those for well-drilling, fence erecting, plumbing, utility hook-ups, security guard services, or electrical services:

(A) *Contractor data.* The contractor shall not provide data generated or otherwise obtained in the performance of contractor responsibilities under a contract to any party other than the recipient, EPA, or its authorized agents for the life of the contract, and for a period of five years after completion of the contract.

(B) *Employment.* The contractor shall not accept employment from any party other than the recipient or Federal agencies for work directly related to the site(s) covered under the contract for five years after the contract has terminated. The recipient agency may exempt the contractor from this requirement through a written release. This release must include EPA concurrence.

(3) *Certification of independent price determination.* The recipient must require that each contractor include in its bid or proposal a certification of independent price determination. This document certifies that no collusion, as defined by Federal and State antitrust laws, occurred during bid preparation.

(4) *Recipient's Contractors.* The recipient must require its contractor to comply with the requirements in § § 35.6270(a)(1) and (2); 35.6320 (a) and (b); 35.6335; 35.6700; and 35.6705. For additional contractor requirements, see also § 35.6710(c); 35.6590(b); and 35.6610.

§ 35.6555 Competition.

The recipient must conduct all procurement transactions in a manner providing maximum full and open competition.

(a) *Restrictions on competition.* Inappropriate restrictions on competition include the following:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding requirements;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive awards to consultants that are on retainer contracts;

(5) Organizational conflicts of interest;

(6) Specifying only a ''brand name'' product, instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement; and

(7) Any arbitrary action in the procurement process.

(b) *Geographic and Indian Tribe preferences*—(1) *Geographic.* When conducting a procurement, the recipient must prohibit the use of statutorily or administratively imposed in-State or local geographical preferences in evaluating bids or proposals. However, nothing in this section preempts State licensing laws. In addition, when contracting for architectural and engineering (A/E) services, the recipient may use geographic location as a selection criterion, provided that when geographic location is used, its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(2) *Indian Tribe.* Any contract or subcontract awarded by an Indian Tribe or Indian intertribal consortium shall comply with the requirements of 40 CFR 31.38, ''Indian Self Determination Act.''

(c) *Written specifications.* The recipient's written specifications must include a clear and accurate description of the technical requirements and the qualitative nature of the material, product or service to be procured.

(1) This description must not contain features which unduly restrict competition, unless the features are necessary to:

(i) Test or demonstrate a specific thing;

(ii) Provide for necessary interchangeability of parts and equipment; or

(iii) Promote innovative technologies.

(2) The recipient must avoid the use of detailed product specifications if at all possible.

(d) *Public notice.* When soliciting bids or proposals, the recipient must allow sufficient time (generally 30 calendar days) between public notice of the proposed project and the deadline for receipt of bids or proposals. The recipient must publish the public notice in professional journals, newspapers, or publications of general circulation over a reasonable area.

(e) *Prequalified lists.* Recipients may use prequalified lists of persons, firms, or products to acquire goods and services. The list must be current and include enough qualified sources to ensure maximum open and free competition. Recipients must not preclude potential bidders from qualifying during the solicitation period.

§ 35.6565 Procurement methods.

The recipient must comply with the requirements for payment to consultants described in 40 CFR 31.36(j). In addition, the recipient must comply with the following requirements:

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold in the aggregate. If small purchase procurements are used, the recipient must obtain and document price or rate quotations from an adequate number of qualified sources.

(b) *Sealed bids (formal advertising).* (For a remedial action award contract, except for Architectural/Engineering services and post-removal site control, the recipient must obtain the award official's approval to use a procurement method other than the sealed bid method.) Bids are publicly solicited and a fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(1) In order for the recipient to use the sealed bid method, the following conditions must be met:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If the recipient uses the sealed bid method, the recipient must comply with the following requirements:

(i) Publicly advertise the invitation for bids and solicit bids from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(ii) The invitation for bids, which must include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) Publicly open all bids at the time and place prescribed in the invitation for bids;

(iv) Award the fixed-price contract in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, the recipient shall consider factors such as discounts, transportation cost, and life cycle costs in determining which bid is lowest. The recipient may only use payment discounts to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) If there is a sound documented reason, the recipient may reject any or all bids.

(c) *Competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If the recipient uses the competitive proposal method, the following requirements apply:

(1) Recipients must publicize requests for proposals and all evaluation factors and must identify their relative importance. The recipient must honor any response to publicized requests for proposals to the maximum extent practical;

(2) Recipients must solicit proposals from an adequate number of qualified sources;

(3) Recipients must have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(4) Recipients must award the contract to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitor's qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not used as a selection factor, may only be used in the procurement of A/E professional services. The recipient may not use this method to purchase other types of services even though A/E firms are a potential source to perform the proposed effort.

(d) *Noncompetitive proposals.* (1) The recipient may procure by noncompetitive proposals only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals, and one of the following circumstances applies:

(i) The item is available only from a single source;

(ii) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation (a declaration of an emergency under State law does not necessarily constitute an emergency under the EPA Superfund program's criteria);

(iii) The award official authorized noncompetitive proposals; or

(iv) After solicitation of a number of sources, competition is determined to be inadequate.

(2) When using noncompetitive procurement, the recipient must conduct a cost analysis in accordance with the requirements described in § 35.6585.

§ 35.6570 Use of the same engineer during subsequent phases of response.

(a) If the public notice clearly stated the possibility that the firm or individual selected could be awarded a contract for follow-on services and initial procurement complied with the procurement requirements, the recipient of a CERCLA remedial response Cooperative Agreement may use the engineer procured to conduct any or all of the follow-on engineering activities without going through the public notice and evaluation procedures.

(b) The recipient may also use the same engineer during subsequent phases of the project in the following cases:

(1) Where the recipient conducted the RI, FS, or design activities without EPA assistance but is using CERCLA funds for follow-on activities, the recipient may use the engineer for subsequent work provided the recipient certifies:

(i) That it complied with the procurement requirements in § 35.6565 when it selected the engineer and the code of conduct requirements described in 40 CFR 31.36(b)(3).

(ii) That any CERCLA-funded contract between the engineer and the recipient meets all of the other provisions as described in the procurement requirements in this subpart.

(2) Where EPA conducted the RI, FS, or design activities but the recipient will assume the responsibility for subsequent phases of response under a Cooperative Agreement, the recipient may use, with the award official's approval, EPA's engineer contractor without further public notice or evaluation provided the recipient follows the rest of the procurement requirements to award the contract.

§ 35.6575 Restrictions on types of contracts.

(a) *Prohibited contracts.* The recipient's procurement system must not allow cost-plus-percentage-of-cost (e.g., a multiplier which includes profit) or percentage-of-construction-cost types of contracts.

(b) *Removal.* Under a removal Cooperative Agreement, the recipient must award a fixed-price contract (lump sum, unit price, or a combination of the two) when procuring contractor support, regardless of the procurement method selected, unless the recipient obtains the award official's prior written approval.

(c) *Time and material contracts.* The recipient may use time and material contracts only if no other type of contract is suitable, and if the contract includes a ceiling price that the contractor exceeds at its own risk.

§ 35.6580 Contracting with minority and women's business enterprises (MBE/WBE), small businesses, and labor surplus area firms.

(a) *Procedures.* The recipient must comply with the six steps described in 40 CFR 31.36(e)(2) to ensure that MBEs, WBEs, and small businesses are used whenever possible as sources of supplies, construction, and services. Tasks to encourage small, minority, and women's business utilization in the Superfund program are eligible for funding under Core Program Cooperative Agreements.

(b) *Labor surplus firms.* EPA encourages recipients to procure supplies and services from labor surplus area firms.

(c) *''Fair share'' objectives.* It is EPA's policy that recipients award a fair share of contracts to small, minority and women's businesses. The policy requires that fair share objectives for minority and women-owned business enterprises be negotiated with the States and/or recipients, but does not require fair share objectives be established for small businesses.

(1) Each recipient must establish an annual ''fair share'' objective for MBE and WBE use. A recipient is not required to attain a particular statistical level of participation by race, ethnicity, or gender of the contractor's owners or managers.

(2) If the recipient is awarded more than one Cooperative Agreement during the year, the recipient may negotiate an annual fair share for all Cooperative Agreements for that year. It is not necessary to have a fair share for each Cooperative Agreement. When a Cooperative Agreement is awarded to a recipient with which a ''fair share'' agreement has not been negotiated, the recipient must not award any contracts under the Cooperative Agreement until the recipient has negotiated a fair share objective with EPA.

§ 35.6585 Cost and price analysis.

(a) *General.* The recipient must conduct and document a cost or price analysis in connection with every procurement action including contract modification.

(1) *Cost analysis.* The recipient must conduct and document a cost analysis for all negotiated contracts over the simplified acquisition threshold and for all change orders regardless of price. A cost analysis is not required when adequate price competition exists and the recipient can establish price reasonableness. The recipient must base its determination of price reasonableness on a catalog or market price of a commercial product sold in substantial quantities to the general public, or on prices set by law or regulation.

(2) *Price analysis.* In all instances other than those described in paragraph (a)(1) of this section, the recipient must perform a price analysis to determine the reasonableness of the proposed contract price.

(b) *Profit analysis.* For each contract in which there is no price competition and in all cases in which cost analysis is performed, the recipient must negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

§ 35.6590 Bonding and insurance.

(a) *General.* The recipient must meet the requirements regarding bonding described in 40 CFR 31.36(h). The recipient must clearly and accurately state in the contract documents the bonds and insurance requirements, including the amounts of security coverage that a bidder or offeror must provide.

(b) *Accidents and catastrophic loss.* The recipient must require the contractor to provide insurance against accidents and catastrophic loss to manage any risk inherent in completing the project.

§ 35.6595 Contract provisions.

(a) *General.* Each contract must be a sound and complete agreement, and include the following provisions:

(1) Nature, scope, and extent of work to be performed;

(2) Time frame for performance;

(3) Total cost of the contract; and

(4) Payment provisions.

(b) *Other contract provisions.* Recipients' contracts must include the following provisions:

(1) *Energy efficiency.* A contract must comply with mandatory standards and policies on energy efficiency contained in the State's energy conservation plan, which is issued under 10 CFR part 420.

(2) *Patents inventions, and copyrights.* All contracts must include notice of EPA requirements and regulations pertaining to reporting and patent rights under any contract involving research, developmental, experimental or demonstration work with respect to any discovery or invention which arises or is developed while conducting work under a contract. This notice shall also include EPA requirements and regulations pertaining to copyrights and rights to data contained in 40 CFR 31.34.

(3) *Labor standards.* The recipient must comply with 40 CFR 31.36(i)(3) through (6).

(4) *Conflict of interest.* The recipient must include provisions pertaining to conflict of interest as described in § 35.6550(b)(2)(ii).

§ 35.6600 Contractor claims.

(a) *General.* The recipient must conduct an administrative and technical review of each claim before EPA will consider funding these costs.

(b) *Claims settlement.* The recipient may incur costs (including legal, technical and administrative) to assess the merits of or to negotiate the settlement of a claim by or against the recipient under a contract, provided:

(1) The claim arises from work within the scope of the Cooperative Agreement;

(2) A formal Cooperative Agreement amendment is executed specifically covering the costs before they are incurred;

(3) The costs are not incurred to prepare documentation that should be prepared by the contractor to support a claim against the recipient; and

(4) The award official determines that there is a significant Federal interest in the issues involved in the claim.

(c) *Claims defense.* The recipient may incur costs (including legal, technical and administrative) to defend against a contractor claim for increased costs under a contract or to prosecute a claim to enforce a contract provided:

(1) The claim arises from work within the scope of the Cooperative Agreement;

(2) A formal Cooperative Agreement amendment is executed specifically covering the costs before they are incurred;

(3) Settlement of the claim cannot occur without arbitration or litigation;

(4) The claim does not result from the recipient's mismanagement;

(5) The award official determines that there is a significant Federal interest in the issues involved in the claim; and

(6) In the case of defending against a contractor claim, the claim does not result from the recipient's responsibility for the improper action of others.

§ 35.6605 Privity of contract.

Neither EPA nor the United States shall be a party to any contract nor to any solicitation or request for proposals.

§ 35.6610 Contracts awarded by a contractor.

The recipient must require its contractor to comply with the following provisions in the award of contracts (i.e. subcontracts). (This section does not apply to a supplier's procurement of materials to produce equipment, materials and catalog, off-the-shelf, or manufactured items.)

(a) The requirements referenced in § 35.6020.

(b) The limitations on contract award in § 35.6550(a)(6).

(c) The requirements regarding minority and women's business enterprises, and small business in § 35.6580.

(d) The requirements regarding specifications in § 35.6555 (a)(6) and (c).

(e) The Federal cost principles in 40 CFR 31.22.

(f) The prohibited types of contracts in § 35.6575(a).

(g) The cost, price analysis, and profit analysis requirements in § 35.6585.

(h) The applicable provisions in § 35.6595 (b).

(i) The applicable provisions in § 35.6555(b)(2).

Reports Required Under a Cooperative Agreement

§ 35.6650 Progress reports.

(a) *Reporting frequency.* The recipient must submit progress reports as specified in the Cooperative Agreement. Progress reports will be required no more frequently than quarterly, and will be required at least annually. The reports shall be due within 30 days after the reporting period. The final progress report shall be due 90 days after expiration or termination of the Cooperative Agreement.

(b) *Content.* The progress report must contain the following information:

(1) An explanation of work accomplished during the reporting period, delays, or other problems, if any, and a description of the corrective measures that are planned. For pre-remedial Cooperative Agreements, the report must include a list of the site-specific products completed and the estimated number of technical hours spent to complete each product.

(2) A comparison of the percentage of the project completed to the project schedule, and an explanation of significant discrepancies.

(3) A comparison of the estimated funds spent to date to planned expenditures and an explanation of significant discrepancies. For remedial, enforcement, and removal reports, the comparison must be on a per task basis.

(4) An estimate of the time and funds needed to complete the work required in the Cooperative Agreement, a comparison of that estimate to the time and funds remaining, and a justification for any increase.

§ 35.6655 Notification of significant developments.

Events may occur between the scheduled performance reporting dates which have significant impact upon the Cooperative Agreement-supported activity. In such cases, the recipient must inform the EPA project officer as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

§ 35.6660 Property inventory reports.

(a) *CERCLA-funded property*—(1) *Content.* The report must contain the following information:

(i) Classification and value of remaining supplies;

(ii) Description of all equipment purchased with CERCLA funds, including its current condition;

(iii) Verification of the current use and continued need for the equipment by site, activity, and operable unit, as applicable;

(iv) Notification of any property which has been stolen or vandalized; and

(v) A request for disposition instructions for any equipment no longer needed on the project.

(2) *Reporting frequency.* The recipient must submit an inventory report to EPA at the following times:

(i) Within 90 days after completing any CERCLA-funded project or any response activity at a site; and

(ii) When the equipment is no longer needed for any CERCLA-funded project or any response activity at a site.

(b) *Federally owned property*—(1) *Content.* The recipient must include the following information for each federally owned item in the inventory report:

(i) Description;

(ii) Decal number;

(iii) Current condition; and

(iv) Request for disposition instructions.

(2) *Reporting frequency.* The recipient must submit an inventory report to the appropriate EPA property accountable officer at the following times:

(i) Annually, due to EPA on the anniversary date of the award;

(ii) When the property is no longer needed; and

(iii) Within 90 days after the end of the project period.

§ 35.6665 Procurement report.

(a) The recipient must report on its use of MBE (minority business enterprise) and WBE (women's business enterprise) firms by submitting a completed Minority and Women's Business Utilization Report (SF–334) to the award official. Reporting commences with the recipient's award of its first contract and continues until it and its contractors have awarded their last contract for the activities or tasks identified in the Cooperative Agreement. The recipient must submit the MBE/WBE Utilization Report within 30 days after the end of each Federal fiscal quarter, regardless of whether the recipient awards a contract to an MBE or WBE during that quarter.

(b) The recipient must also report on its efforts to encourage MBE participation in the Superfund program pursuant to CERCLA Sec. 105(f). Information on the recipient's efforts to encourage MBE participation in the Superfund program may be included in each SF–334 submitted quarterly, but is required in the SF–334 submitted for the fourth quarter, due November 1 of each year.

§ 35.6670 Financial reports.

(a) *General.* The recipient must comply with the requirements regarding financial reporting described in 40 CFR 31.41.

(b) *Financial Status Report*—(1) *Content.* (i) The Financial Status Report (SF–269) must include financial information by site, activity, and operable unit, as applicable.

(ii) A final Financial Status Report (FSR) must have no unliquidated obligations. If any obligations remain unliquidated, the FSR is considered an interim report and the recipient must submit a final FSR to EPA after liquidating all obligations.

(2) *Reporting frequency.* The recipient must file a Financial Status Report as follows:

(i) Annually due 90 days after the end of the Federal fiscal year or as specified in the Cooperative Agreement; or if quarterly or semiannual reports are required in accordance with 40 CFR 31.41(b)(3), due 30 days after the reporting period;

(ii) Within 90 calendar days after completing each CERCLA-funded response activity at a site (submit the FSR only for each completed activity); and

(iii) Within 90 calendar days after termination or closeout of the Cooperative Agreement.

Records Requirements Under a Cooperative Agreement

§ 35.6700 Project records.

The lead agency for the response action must compile and maintain an administrative record consistent with section 113 of CERCLA, the National Contingency Plan, and relevant EPA policy and guidance. In addition, recipients of assistance (whether lead or support agency) are responsible for maintaining project files described as follows.

(a) *General.* The recipient must maintain project records by site, activity, and operable unit, as applicable.

(b) *Financial records.* The recipient must maintain records which support the following items:

(1) Amount of funds received and expended; and

(2) Direct and indirect project cost.

(c) *Property records.* The recipient must maintain records which support the following items:

(1) Description of the property;

(2) Manufacturer's serial number, model number, or other identification number;

(3) Source of the property, including the assistance identification number;

(4) Information regarding whether the title is vested in the recipient or EPA;

(5) Unit acquisition date and cost;

(6) Percentage of EPA's interest;

(7) Location, use and condition (by site, activity, and operable unit, as applicable) and the date this information was recorded; and

(8) Ultimate disposition data, including the sales price or the method used to determine the price, or the method used to determine the value of EPA's interest for which the recipient compensates EPA in accordance with § § 35.6340, 35.6345, and 35.6350.

(d) *Procurement records*—(1) *General.* The recipient must maintain records which support the following items, and must make them available to the public:

(i) The reasons for rejecting any or all bids; and

(ii) The justification for a procurement made on a noncompetitively negotiated basis.

(2) *Procurements in excess of the simplified acquisition threshold.* The recipient's records and files for procurements in excess of the simplified acquisition threshold must include the following information, in addition to the information required in paragraph (d)(1) of this section:

(i) The basis for contractor selection;

(ii) A written justification for selecting the procurement method;

(iii) A written justification for use of any specification which does not provide for maximum free and open competition;

(iv) A written justification for the choice of contract type; and

(v) The basis for award cost or price, including a copy of the cost or price analysis made in accordance with § 35.6585 and documentation of negotiations.

(e) *Other records.* The recipient must maintain records which support the following items:

(1) Time and attendance records and supporting documentation;

(2) Documentation of compliance with statutes and regulations that apply to the project; and

(3) The number of site-specific technical hours spent to complete each pre-remedial product.

§ 35.6705 Records retention.

(a) *Applicability.* This requirement applies to all financial and programmatic records, supporting documents, statistical records, and other records which are required to be maintained by the terms, program regulations, or the Cooperative Agreement, or are otherwise reasonably considered as pertinent to program regulations or the Cooperative Agreement.

(b) *Length of retention period.* The recipient must maintain all records for 10 years following submission of the final Financial Status Report unless otherwise directed by the EPA award official, and must obtain written approval from the EPA award official before destroying any records. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

(c) *Substitution of an unalterable electronic format.* An unalterable electronic format, acceptable to EPA, may be substituted for the original records. The copying of any unalterable electronic format must be performed in accordance with the technical regulations concerning Federal Government records (36 CFR parts 1220 through 1234) and EPA records management requirements.

(d) *Starting date of retention period.* The recipient must comply with the requirements regarding the starting dates for records retention described in 40 CFR 31.42(c) (1) and (2).

§ 35.6710 Records access.

(a) *Recipient requirements.* The recipient must comply with the requirements regarding records access described in 40 CFR 31.42(e).

(b) *Availability of records.* The recipient must, with the exception of certain policy, deliberative, and enforcement documents which may be held confidential, ensure that all files are available to the public.

(c) *Contractor requirements.* The recipient must require its contractor to comply with the requirements regarding records access described in 40 CFR 31.36(i)(10).

Other Administrative Requirements for Cooperative Agreements

§ 35.6750 Modifications.

The recipient must comply with the requirements regarding changes to the Cooperative Agreement described in 40 CFR 31.30.

§ 35.6755 Monitoring program performance.

The recipient must comply with the requirements regarding program performance monitoring described in 40 CFR 31.40 (a) and (e).

§ 35.6760 Enforcement and termination for convenience.

The recipient must comply with all terms and conditions in the Cooperative Agreement, and is subject to the requirements regarding enforcement of the terms of an award and termination for convenience described in 40 CFR 31.43 and 31.44.

§ 35.6765 Non-Federal audit.

The recipient must comply with the requirements regarding non-Federal audits described in 40 CFR 31.26.

§ 35.6770 Disputes.

The recipient must comply with the requirements regarding dispute resolution procedures described in 40 CFR 31.70.

§ 35.6775 Exclusion of third-party benefits.

The Cooperative Agreement benefits only the signatories to the Cooperative Agreement.

§ 35.6780 Closeout.

(a) Closeout of a Cooperative Agreement, or an activity under a Cooperative Agreement, can take place in the following situations:

(1) After the completion of all work for a response activity at a site; or

(2) After all activities under a Cooperative Agreement have been completed; or

(3) Upon termination of the Cooperative Agreement.

(b) The recipient must comply with the closeout requirements described in 40 CFR 31.50 and 31.51.

(c) After closeout, EPA may monitor the recipients' compliance with the assurance to provide all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510(c)(1) of the NCP.

§ 35.6785 Collection of amounts due.

The recipient must comply with the requirements described in 40 CFR 31.52, regarding collection of amounts due.

§ 35.6790 High risk recipients.

If EPA determines that a recipient is not responsible, EPA may impose restrictions on the award as described in 40 CFR 31.12.

Requirements for Administering a Superfund State Contract (SSC)

§ 35.6800 Superfund State Contract.

A Superfund State Contract (SSC) with a State is required before EPA can obligate or expend funds for a remedial action at a site within the State and before EPA or a political subdivision can conduct the remedial action. An SSC also ensures State or Indian Tribe involvement consistent with CERCLA sections 121(f) and 126, respectively, and obtains the required section 104 assurances (*See* § 35.6105(b)). An SSC may also be used to document the roles and responsibilities of a State, Indian Tribe, and political subdivision during any response action at a site. A political subdivision may be a signatory to the SSC.

§ 35.6805 Contents of an SSC.

The SSC must include the following provisions:

(a) *General authorities*, which documents the relevant statutes and regulations (of each government entity that is a party to the contract) governing the contract.

(b) *Purpose of the SSC*, which describes the response activities to be conducted and the benefits to be derived.

(c) *Negation of agency relationship between the signatories*, which states that no signatory of the SSC can represent or act on the behalf of any other signatory in any matter associated with the SSC.

(d) *A site description*, pursuant to § 35.6105(a)(2)(i).

(e) *A site-specific Statement of Work*, pursuant to § 35.6105(a)(2)(ii) and a statement of whether the contract constitutes an initial SSC or an amendment to an existing contract.

(f) *A statement of intention* to follow EPA policy and guidance.

(g) *A project schedule* to be prepared during response activities.

(h) *A statement designating a primary contact* for each party to the contract, which designates representatives to act on behalf of each signatory in the implementation of the contract. This statement must document the authority of each project manager to approve modifications to the project so long as such changes are within the scope of the contract and do not significantly impact the SSC.

(i) *The CERCLA assurances*, as appropriate, described as follows:

(1) *Operation and maintenance.* The State must provide an assurance pursuant to § 35.6105(b)(1). The State's responsibility for operation and maintenance generally begins when EPA determines that the remedy is operational and functional or one year after construction completion, whichever is sooner (*See*, 40 CFR 300.435(f)).

(2) *Twenty-year waste capacity.* The State must provide an assurance pursuant to § 35.6105(b)(3).

(3) *Off-site storage*, treatment, or disposal. If off-site storage, destruction, treatment, or disposal is required, the State must provide an assurance pursuant to § 35.6105(b)(4); the political subdivision may not provide this assurance.

(4) *Real property acquisition.* When real property must be acquired, the State must provide an assurance pursuant to § 35.6105(b)(5).

(5) *Provision of State cost share.* The State must provide assurances for cost sharing pursuant to § 35.6105(b)(2). Even if the political subdivision is providing the actual cost share, the State must guarantee payment of the cost share in the event of default by the political subdivision.

(j) *Cost share conditions*, which include:

(1) An estimate of the response action cost (excluding EPA's indirect costs) that requires cost share;

(2) The basis for arriving at this figure (*See* § 35.6285(c) for credit provisions); and

(3) The payment schedule as negotiated by the signatories, and consistent with either a lump-sum or incremental-payment option. Upon completion of activities in the site-specific Statement of Work, EPA shall invoice the State for its final payment, with the exception of any change orders and claims handled during reconciliation of the SSC.

(k) *Reconciliation provision*, which states that the SSC remains in effect until the financial settlement of project costs and final reconciliation of response costs (including all change orders, claims, overpayments, reimbursements, etc.) ensure that both EPA and the State have satisfied the cost share requirement contained in section 104 of CERCLA, as amended. Overpayments in an SSC may not be used to meet the cost-sharing obligation at another site. Reimbursements for any overpayment will be made to the payer identified in the SSC.

(l) *Amendability of the SSC*, which provides that:

(1) Formal amendments are required when alterations to CERCLA-funded activities are necessary or when alterations impact the State's assurances pursuant to the National Contingency Plan and CERCLA, as amended. Such amendments must include a Statement of Work for the amendment as described in paragraph (e) of this section; and

(2) Any change(s) in the SSC must be agreed to, in writing, by the signatories, except as provided elsewhere in the SSC, and must be reflected in all response agreements affected by the change(s).

(m) *List of support agency Cooperative Agreements* that are also in place for the site.

(n) *Litigation*, which describes EPA's right to bring an action against any party under section 106 of CERCLA to compel cleanup, or for cost recovery under section 107 of CERCLA.

(o) *Sanctions for failure to comply with SSC terms*, which states that if the signatories fail to comply with the terms of the SSC, EPA may proceed under the provisions of section 104(d)(2) of CERCLA and may seek in the

appropriate court of competent jurisdiction to enforce the SSC or to recover any funds advanced or any costs incurred due to a breach of the SSC. Other signatories to the SSC may seek remedies in the appropriate court of competent jurisdiction.

(p) *Site access.* The State or political subdivision or Indian Tribe is expected to use its own authority to secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to the SSC.

(q) *Final inspection of the remedy.* The SSC must include a statement that following completion of the remedial action, the State and EPA shall jointly inspect the project to determine that the remedy is functioning properly and is performing as designed.

(r) *Exclusion of third-party benefits*, which states that the SSC is intended to benefit only the signatories of the SSC, and extends no benefit or right to any third party not a signatory to the SSC.

(s) *Any other provision* deemed necessary by all parties to facilitate the response activities covered by the SSC.

(t) *State review.* The State or Indian Tribe must review and comment on the response actions pursuant to the SSC. Unless otherwise stated in the SSC, all time frames for review must follow those prescribed in the NCP (40 CFR part 300).

(u) *Responsible party activities*, which states that if a Responsible Party takes over any activities at the site, the SSC will be modified or terminated, as appropriate.

(v) *Out-of-State or out-of-an-Indian-Tribal-area-of-Indian-country transfers of CERCLA waste*, which states that, unless otherwise provided for by EPA or a political subdivision, the State or Indian Tribe must provide the notification requirements described in § 35.6120.

§ 35.6815 Administrative requirements.

In addition to the requirements specified in § 35.6805, the State and/or political subdivision must comply with the following:

(a) *Financial administration.* The State and/or political subdivision must comply with the following requirements regarding financial administration:

(1) *Payment.* The State may pay for its share of the costs of the response activities in cash or credit. As appropriate, specific credit provisions should be included in the SSC consistent with the requirements described in § 35.6285(c). The State may not pay for its cost share using in-kind services, unless the State has entered into a support agency Cooperative Agreement with EPA. The use of the support agency Cooperative Agreement as a vehicle for providing cost share must be documented in the SSC. If the political subdivision agrees to provide all or part of the State's cost share pursuant to a political subdivision-lead Cooperative Agreement, the political subdivision may pay for those costs in cash or in-kind services under that agreement. The use of a political subdivision-lead Cooperative Agreement as a vehicle for providing cost share must also be documented in the SSC. The specific payment terms must be documented in the SSC pursuant to § 35.6805.

(2) *Collection of amounts due.* The State and/or political subdivision must comply with the requirements described in 40 CFR 31.52(a) regarding collection of amounts due.

(3) *Failure to comply with negotiated payment terms.* Failure to comply with negotiated payment terms may be construed as default by the State on its required assurances, even if the political subdivision is responsible for providing all or part of the cost share. (*See* § 35.6805(i)(5).)

(b) *Personal property.* The State, Indian Tribe, or political subdivision is required to accept title. The following requirements apply to equipment used as all or part of the remedy:

(1) *Fixed in-place equipment.* EPA no longer has an interest in fixed in-place equipment once the equipment is installed.

(2) *Equipment that is an integral part of services to individuals.* EPA no longer has an interest in equipment that is an integral part of services to individuals, such as pipes, lines, or pumps providing hookups for homeowners on an existing water distribution system, once EPA certifies that the remedy is operational and functional.

(c) *Reports.* The State and/or political subdivision or Indian Tribe must comply with the following requirements regarding reports:

(1) *EPA-lead.* The nature and frequency of reports between EPA and the State or Indian Tribe will be specified in the SSC.

(2) *Political subdivision-lead.* The political subdivision must submit to the State a copy of all reports which the political subdivision is required to submit to EPA in accordance with the requirements of its Cooperative Agreement. (*See* § 35.6650 for requirements regarding progress reports.)

(d) *Records.* The State and political subdivision or Indian Tribe must maintain records on a site-specific basis. The State and political subdivision or Indian Tribe must comply with the requirements regarding record retention described in § 35.6705 and the requirements regarding record access described in § 35.6710.

§ 35.6820 Conclusion of the SSC.

(a) In order to conclude the SSC, the signatories must:

(1) Satisfactorily complete the response activities at the site and make all payments based upon project costs determined in § 35.6805(j);

(2) Produce a final accounting of all project costs, including change orders and outstanding contractor claims;

(3) Submit all State cost share payments to EPA (*See* § 35.6805(i)(5));

(4) Assume responsibility for all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510 (c)(1) of the NCP, and if applicable, accept transfer of any Federal interest in real property (*See* § 35.6805(i)(4)).

(b) After the administrative conclusion of the Superfund State Contract, EPA may monitor the signatory's compliance with assurances to provide all future operation and maintenance as required by CERCLA section 104(c) and addressed in 40 CFR 300.510(c)(1) of the NCP.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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